IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. ~~8070~~ 29

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, *Petitioner,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on October 7, 1968.

Opinions Below

The original oral opinion of the district court, set forth in Appendix D hereto, pp. 19a-23a, *infra,* is not reported. The opinion of the district court on motion to vacate the judgment, set forth in Appendix C hereto, pp. 11a-18a, *infra,* is reported at 267 F. Supp. 572. The opinion of the court of appeals, set forth in Appendix B hereto, pp. 8a-10a, *infra,* is reported at 401 F. 2d 368.

Jurisdiction

The judgment of the court of appeals, set forth in Appendix E hereto, p. 24a, *infra,* was entered October 7, 1968.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

A railroad's right under its existing collective bargaining contract to establish outlying work assignments has been established conclusively by an adjustment board determination under Section 3 of the Railway Labor Act (45 U.S.C. § 153) and is not disputed by the union. The railroad decided, for business reasons, to create an outlying assignment. Upon learning that, the union served a notice under Section 6 of the Act (45 U.S.C. § 156) proposing that the agreement be changed to abrogate the railroad's right to establish outlying assignments. The question presented is:

Does Section 6 of the Act prohibit the railroad from establishing outlying assignments during negotiations upon the union's notice—*i.e., does Section 6 prohibit a railroad from taking action permitted by its existing collective bargaining contract during negotiations upon a union proposal to amend the contract to prohibit such action?*

Statutes Involved

The statute principally involved is Section 6 of the Railway Labor Act (45 U.S.C. § 156):

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are

being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Other provisions of the Railway Labor Act are also involved and printed in Appendix A, pp. 1a-7a, *infra*.

Statement

The Detroit and Toledo Shore Line Railroad, the petitioner herein, instituted this action to enjoin a strike threatened by the Brotherhood of Locomotive Firemen and Enginemen (BLF&E). The BLF&E counterclaimed to enjoin the Shore Line from establishing work assignments originating at points not previously used as terminal points. The district court dismissed the Shore Line's complaint and granted the injunction sought by the BLF&E. The court of appeals affirmed. The Shore Line now seeks review by this Court.

The main line of the Shore Line runs from Toledo, Ohio to Detroit, Michigan. Until 1961, work assignments for the Shore Line's crews all started and ended at Lang Yard in Toledo. However, because of an increasing volume of business in Trenton, Michigan, the Shore Line decided to establish another terminal at that point (pp. 8a, 26a, *infra*).

Accordingly, in 1961 the Shore Line notified three unions representing its employees, including the BLF&E, that certain work assignments would henceforth originate in Trenton. The unions responded by serving the Shore Line with notices pursuant to Section 6 of the Railway Labor Act (45

U.S.C. § 156) proposing certain special working conditions for employees who would operate out of Trenton. Conferences on the notices failed to settle the matter, which therefore was referred to the National Mediation Board for mediation. While the matter was pending before the Board, the Shore Line established two new work assignments originating in Dearoad, Michigan, eleven miles north of Trenton (pp. 8a-9a, 26a, *infra*).

After the Dearoad work assignments were announced, the BLF&E abandoned its Section 6 notice proposing a change in the parties' agreements, and claimed instead, before a Special Board of Adjustment established under Section 3 of the Railway Labor Act (45 U.S.C. § 153), that "the establishment of these new runs violated" the existing collective agreement between the parties (P.A. 71a-72a;[1] pp. 9a, 27a, *infra*). However, the Special Board ruled that the establishment of outlying work assignments was permissible under the collective agreement (pp. 9a, 32a, 33a, *infra*). As the court below observed, the Special Board's ruling on the parties' "minor dispute" as to the interpretation of the agreement "is binding on the parties" under Section 3 of the Railway Labor Act (45 U.S.C. § 153) (pp. 9a, 2a-4a, *infra*).[2]

When the Special Board had confirmed the Shore Line's right, under the existing collective agreement, to establish outlying work assignments, the Shore Line revived its plan to establish assignments originating at Trenton. Learning this, the BLF&E served a new Section 6 notice on the Shore Line, proposing that the existing agreement be amended to provide that "all road service runs and/or assignments will originate and terminate at Lang Yard. . . ." The proposed amendment to the agreement would abrogate the Shore Line's right to establish outlying work assignments (pp. 9a, 27a, *infra*).

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[1] Plaintiff-Appellant's Appendix in the court below.

[2] See, *e.g.*, *Gunther* v. *San Diego & A.E.R. Co.*, 382 U.S. 257 (1965).

The parties were unable to reach an agreement upon the BLF&E's proposal. Consequently, the BLF&E sought mediation by the National Mediation Board. Subsequently, the Shore Line posted notices announcing the establishment of two new work assignments originating at Trenton. The BLF&E threatened to strike, and this action followed (pp. 9a, 27a-28a, *infra*).

The district court enjoined the Shore Line from "establishing or operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established" (pp. 9a, 31a, *infra*). The injunction was purportedly grounded on Section 6 of the Railway Labor Act (45 U.S.C. § 156), which provides that carriers and unions shall give thirty days' notice of "an intended change in agreements affecting rates of pay, rules, or working conditions," and that "[i]n every case where such notice of intended change has been given, . . . rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board . . ." (pp. 9a, 30a, *infra*).[3]

The Shore Line moved for reconsideration. It pointed out that in *Williams* v. *Jacksonville Terminal Co.*, 315 U.S. 386, 402-403 (1942), this Court had held that under Section 6 the making of a proposal for an agreement "does not change the authority of the carrier" because the "prohibitions of § 6 against changes of wages or conditions pending bargaining . . . are aimed at preventing changes in conditions *previously fixed by collective bargaining agreements*"

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[3] Initially, the injunction was grounded on Section 5 of the Act (45 U.S.C. § 155) as well as on Section 6 (p. 30a, *infra*). Section 5 contains a status quo requirement that applies after the Mediation Board terminates its services. See p. 5a, *infra*. The Mediation Board has not terminated its services in this case (pp. 12a, 28a, *infra*). Accordingly, the district court relied only on Section 6 when it denied the Shore Line's motion to vacate the judgment (pp. 16a-18a, *infra*), as did the court of appeals when it affirmed (pp. 9a, 10a, *infra*).

(emphasis added). In addition, the Shore Line pointed out that the National Mediation Board has stated repeatedly, in accordance with this Court's holding in *Williams*, that "the serving of a Section 6 notice for a new rule or a change in an existing rule does not operate as a bar to carrier actions which are taken under rules currently in effect"—*i.e.*, that "Section 6 is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with." NMB, 33d Ann. Rep. 36 (1968). The district court held, however, that this Court's holding in *Williams* applies only to the rare case in which there is no collective agreement in existence, and that the Mediation Board had misinterpreted Section 6 (pp. 15a-17a, *infra*).

On appeal, the Sixth Circuit affirmed. The Shore Line contended, as it had in the district court, that the status quo provision in Section 6 applies only to changes in rates of pay, rules, or working conditions which are embodied in the collective bargaining contract. The court of appeals rejected that contention, however, holding it "lacking in merit for the reasons stated in the opinion of the District Judge" (pp. 9a-10a, *infra*).

The Shore Line now seeks review by this Court.

Reasons for Granting the Writ

In *Locomotive Engineers* v. *M.-K.-T. R. Co.*, 363 U.S. 528 (1960), this Court examined the nature of a carrier's obligation to maintain the "status quo" during the pendency of a "minor" dispute as to the interpretation of existing agreements. In this case we ask the Court to determine the nature of a carrier's obligation to maintain the "status quo" during the pendency of a "major" dispute as to a proposed change in agreements.[4] There is no more important ques-

[4] For the distinction between the "major" and "minor" disputes of the railway labor world, see *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 723 (1945).

tion with respect to railway labor relations before the courts today. We believe it deserves review.

1. The decision below is directly in conflict with applicable decisions of this Court. The court below held that Section 6 prohibits changes in working conditions following the service of a Section 6 notice when the carrier's right to make the changes under existing agreements is indisputable and, indeed, is conceded (pp. 9a-10a, 15a-18a, 22a, *infra*). That holding is contrary to this Court's decision in *Williams* v. *Jacksonville Terminal Co., supra,* 315 U.S., at 401-403. In that case, redcaps at the Dallas Terminal, who previously were unrepresented, selected a collective bargaining representative. The representative then served the Terminal with a request "for a conference to negotiate an agreement for working conditions and other related subjects. . . ." 315 U.S., at 402. For at least thirteen years before that, redcaps had been permitted to keep their tips without accounting for them to the Terminal. 33 F. Supp. 244, at 248. While the request for a contract was pending, however, the Fair Labor Standards Act became effective. The Terminal notified the redcaps that henceforth they would be required to account for their tips and the Terminal would pay them the difference between the tips and the statutory minimum wage. The redcaps contended that the Terminal had changed their rates of pay and working conditions in violation of the status quo requirements of Sections 2 Seventh [5] and 6 of the Railway

[5] Section 2 Seventh provides that "[n]o carrier . . . shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act" (45 U.S.C. § 152 Seventh, p. 1a, *infra*). This provision does not bar a carrier from changing rates of pay, rules, or working conditions which are *not* embodied in agreements. *Illinois Central R. Co.* v. *Brotherhood of Loc. Fire. & Eng.,* 332 F.2d 850 (7th Cir., 1964); *St. Louis, S. F. & T. R. Co.* v. *Railroad Yardmasters,* 328 F.2d 749 (5th Cir., 1964).

Labor Act. This Court rejected that contention, holding that:

> "The institution of negotiations for collective bargaining does not change the authority of the carrier. The prohibitions of § 6 against changes of wages or conditions pending bargaining and those of § 2, Seventh, are aimed at preventing changes in conditions previously fixed by collective bargaining agreements. Arrangements made after collective bargaining obviously are entitled to a higher degree of permanency and continuity than those made by the carrier for its own convenience and purpose." 315 U.S., at 402-403.

The decision below is contrary to that unqualified holding in *Williams*. The district court was of the view that the holding in *Williams* applies only to cases in which the parties do not yet have a collective bargaining contract—the situation in *Williams*. See pp. 16a-17a, *infra*. But that is a fact about *Williams* that looks the other way. As this Court stated, "[a]rrangements made after collective bargaining obviously are entitled to a higher degree of permanency and continuity than those made by the carrier for its own convenience and purpose." Therefore, the rights of a carrier *after* the parties have entered into a collective bargaining contract (as in this case) should be entitled to more, not less, protection than the rights of a carrier before there is any contract. The decision of the Special Board of Adjustment (p. 4, *supra;* p. 32a, *infra*) established conclusively that under its existing agreements the Shore Line had the right to establish outlying assignments.[6]

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[6] What the district court said with respect to *Williams* was that this Court had "held that section 6 did not apply . . . because section 6 applies only to intended changes in collective bargaining agreements and there was no agreement in existence to change" (p. 17a, *infra*). However, this

This Court has never retreated from its holding in *Williams*. On the contrary, in *Order of Conductors* v. *Pitney*, 326 U.S. 561, 565 (1946), it reiterated the view that "the only conduct which would violate § 6 is a change of those working conditions which are 'embodied' in agreements." We submit that there is no sound basis for narrowing the rule of *Williams* and *Pitney*. But in any event, if that rule is to be limited to the extremely rare case in which there is no collective contract at all, as was held below, it should be this Court that restricts its previous holdings, not a lower court.

2. The decision below also is contrary to decisions by other courts of appeals and by several district courts.

a. The decision below conflicts directly with two decisions of the Seventh Circuit. In *Hilbert* v. *Pennsylvania R. Co.*, 290 F.2d 881 (7th Cir., 1961), the Seventh Circuit held that a railroad's right to change the location of crew terminals,

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Court has indicated that a proposal to make an agreement when "there [is] no agreement in existence to change" *is* a request for a "change in agreements" within the meaning of Section 6. In its landmark exposition of the Railway Labor Act in *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 723 (1945), the Court said that the "major" dispute procedures of the Act (prescribed by Sections 5, 6 and 10, 45 U.S.C. §§ 155, 156, 160) relate "to disputes over the *formation* of collective bargaining agreements *or efforts to secure them*," and that such disputes "arise *where there is no such agreement* or where it is sought to change the terms of one . . ." (emphasis added). Otherwise, in the absence of a preexisting agreement a union could strike to obtain an agreement without first exhausting the major dispute procedures, something Congress obviously did not intend when it enacted the Railway Labor Act "to provide a machinery to prevent strikes," *Texas & N.O.R. Co.* v. *Ry. Clerks*, 281 U.S. 548, 565 (1930). Therefore, the redcaps' written demand for a collective bargaining agreement in *Williams* was sufficient to invoke the procedures of Section 6 and thus to bring into play the status quo requirement of Section 6. See 315 U.S., at 402-403; *cf. Pullman Co.* v. *Order of Ry. Conductors & Brakemen*, 316 F.2d 556, 562 (7th Cir., 1963). What the Court held in *Williams* was not that Section 6 does not apply in the absence of a prior agreement, as the district court believed, but that the carrier's action did not violate Section 6 because it did not violate an existing agreement. 315 U.S., at 402-403.

following the service of a notice proposing modification of existing agreements with respect to the matter (see 290 F.2d, at 885; 307 F.2d, at 24-25 n. 1), turned on whether such changes were permissible under the applicable rule established by the existing agreements—"[t]*hat rule remains in effect.*" 290 F.2d, at 885. Similarly, in *Illinois Central R. Co.* v. *Brotherhood of Railroad Train.*, 398 F.2d 973 (7th Cir., 1968), the Seventh Circuit approved a holding that a railroad's right to reduce the number of trainmen assigned to certain crews, following the service of a notice proposing a prohibition of such reductions (398 F.2d, at 975 n. 2), depended on whether the reductions were permitted by rules already in existence. 398 F.2d, at 975, 979. See also *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Eng.*, 307 F.2d 21 (2d Cir., 1962), *reversing* 188 F. Supp. 721 (D. Vt., 1960), in which the Second Circuit reached conclusions similar to those of the Seventh Circuit in *Hilbert*. In each of these cases, the unions were denied injunctive relief based on the status quo provision in Section 6 in the absence of an adjustment board determination that the carrier's actions were *prohibited* by existing rules. 290 F.2d, at 882, 885-886; 398 F.2d, at 975, 979; 188 F. Supp., at 723, 728. In the case now before this Court, however, the union was granted such relief *notwithstanding* an adjustment board determination that the carrier's actions were *permitted* by existing rules. See p. 4, *supra*; p. 32a *infra*. Thus, these decisions are squarely in conflict.[7]

[7] In the court below, respondent contended that the cases referred to above are "not in point" because they "involved minor as well as major disputes." In each case the parties disagreed as to whether the carrier's actions were permitted by existing rules. Thus, in addition to the major dispute created by the service of a Section 6 notice proposing a change in the applicable agreement, each case also involved a minor dispute as to the interpretation of the agreement. So, too, in the instant case, there once was a minor dispute between the parties as to the Shore Line's right under the existing agreement to establish outlying assignments. That dispute has now been determined, in the Shore Line's favor, and it is conceded

b. The decision below also is directly in conflict with a decision of the District of Columbia Circuit, *Southern Ry. Co.* v. *Brotherhood of Locomotive Firemen, Etc.*, 337 F.2d 127 (D.C. Cir., 1964). In that case the Southern served the BLF&E with a notice proposing the abrogation of rules requiring assignment of firemen to diesel locomotives. 337 F.2d, at 130. For years the collective agreement had provided that "[a] fireman . . . shall be employed on all locomotives," and, accordingly, the Southern had assigned firemen to all locomotives including diesel locomotives. 337 F.2d, at 129. However, it began operating diesel locomotives without firemen, claiming that the existing agreement only required it to place firemen on such locomotives when there were firemen available who were on the seniority roster when the agreement was made. The BLF&E sought an injunction

> "... because the Section 6 notice served by Southern, proposing to change the existing agreement with respect to use of firemen on locomotives, was still pending before the National Mediation Board and Section 6 of the Railway Labor Act prevented the change in working conditions involved in operating trains without firemen in such circumstances." 337 F.2d, at 131.

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that the existing agreement does not prohibit the establishment of such assignments. See p. 4, *supra;* p. 32a, *infra.* That fact obviously does not distinguish the Shore Line's case; it makes it *a fortiori.*

Not only was the union in *Hilbert* denied a status quo order based on Section 6 (the aspect of the case that is relevant here) but it was also denied a status quo order based on *Locomotive Engineers* v. *M.-K.-T. R. Co., supra,* 363 U.S. 528—*i.e.,* an order prohibiting carrier action pending determination of the parties' minor dispute. See 290 F.2d, at 885. In the *Illinois Central* case, on the other hand, the court required the carrier to preserve the "status quo" pending a determination of the parties' minor dispute; an adjustment board eventually determined that dispute in the union's favor; and at that point entry of a status quo order based on Section 6 was quite properly held to be appropriate. See 398 F.2d, at 975, 976, 979.

The district court granted injunctive relief, and the court of appeals affirmed. The court of appeals reasoned that to allow "a change in the long-standing interpretation . . . which had been given by the parties to the existing contract" would "in substance and effect change the contract itself." 337 F.2d, at 132. However, the court went on to hold —and this is the salient aspect of the decision for present purposes—that the injunction could not remain in effect if an adjustment board were to determine that operation of diesels without firemen was permissible under the existing agreement:

> "[W]e think that the District Court properly ordered . . . that the injunction will remain effective until either the NRAB interprets the contract in Southern's favor or until the contract is modified or changed under the Railway Labor Act. The NRAB of course is not ordinarily concerned with Section 6 proposals, but here the contract change proposed under Section 6 would be put into effect immediately by the change in the long-standing prior interpretation and application of the old contract. To be effective and to effectuate the command of Section 6, the injunction under the Section 6 claim must, pending exhaustion of the statutory processes for negotiation of a new contract under the Act, properly preclude such a change in interpretation until such change is authorized by the NRAB, even granting that ordinarily the change could not be enjoined." 337 F.2d, at 132-133.

In short, notwithstanding the carrier's long-established practice, the court of appeals held that the injunction against the operation of diesels without firemen could not remain in effect in the face of an adjustment board determination that such operation was permitted by the existing agreement. But in the case now before this Court, the Sixth Circuit

affirmed an injunction against the establishment of outlying assignments *after* an adjustment board determination that the establishment of such assignments *is* permitted by the existing agreement. The two decisions are irreconcilable.

c. The decision below also is contrary to the considered view of the Fourth Circuit as to the meaning of this Court's decision in *Williams:*

> "... the prohibitions of [Sections 2 Seventh and 6] fall short of unilateral changes made in accordance with the terms of the applicable agreements and are limited to changes in those working conditions which are embodied in the agreement. See Williams v. Jacksonville Terminal Company. ...." *Norfolk & P.B.L.R. Co.* v. *Brotherhood of Rail. Train.*, 248 F.2d 34, 41 (4th Cir. 1957).

d. In addition, the decision below conflicts directly with four district court decisions—in the Northern District of Illinois, *Railway Clerks* v. *Santa Fe R. Co.*, 50 CCH Lab. Cas. ¶ 19,299 (N.D. Ill., 1964), pp. 40a-46a, *infra;* in the Southern District of California, *Flight Engineers* v. *Western Air Lines*, 43 CCH Lab. Cas. ¶ 17,064 (S.D. Cal., 1961), pp. 47a-55a, *infra;* in the Eastern District of Missouri, *Brotherhood of Railroad Trainmen* v. *Illinois Terminal R. Co.*, No. 66 C 96 (3), May 24, 1966 (unreported), pp. 56a-59a, *infra*; and in the Southern District of Mississippi, *Transportation-Communication Employees Union* v. *Illinois Central R. Co.*, No. 4192, October 4, 1967 (unreported), pp. 60a-63a, *infra.*[8] Thus, for example, in *Flight Engineers* v. *Western Air Lines, supra,* the court held that:

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[8] The oral opinion in *Spokane, Portland & Seattle R. Co.* v. *Order of Railway C. & B.*, 265 F. Supp. 892, 894 (D.D.C., 1967), appears to be to the contrary, but the conflicting implications of that opinion were negatived by the court when it entered its order (pp. 64a-67a, *infra*).

> "... the prohibitions of Section 6 against changes in rules or working conditions pending bargaining, ... apply only to rules and working conditions previously fixed by collective bargaining agreements. *Williams* v. *Jacksonville Terminal Co.* ..." 43 CCH Lab. Cas., at p. 24,915, pp. 54a-55a, *infra*.

3. The decision below also is contrary to the long-standing interpretation of Section 6 by the National Mediation Board, the administrative agency which administers the relevant sections of the Railway Labor Act.[9] In accordance with this Court's ruling in *Williams*, the Mediation Board has stated in its annual reports for a number of years that:

> "Another type of situation involves the case where an organization serves a proper section 6 notice on the carrier proposing to restrict the right of the carrier to unilaterally act in a certain area. Handling of the proposal through various stages of the Railway Labor Act has not been completed when complaints will sometimes be made that the carrier is not observing the 'status quo' provisions of section 6 when it institutes an action which would be contrary to the agreement if the proposed section 6 notice had at that time been accepted by both parties.
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> "Section 6 states that where notice of intended change in an agreement has been given, rates of pay, rules, and working conditions as expressed in the agreement shall not be altered by the carrier until the controversy has been finally acted upon in accordance with

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[9] Administrative practice embodying an interpretation of a statute, consistently followed over a long period, is entitled to great weight in construing the statute. See, *e.g.*, 1 Davis, Administrative Law, § 5.06 (1958); *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944).

specified procedures. Positively stated, section 6 is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with. When the procedures of the act have been exhausted without an agreement between the parties on the 30-day notice of intended change, the carrier may alter the contract to the extent indicated in the 30-day notice, and the organization is free to take such action as it deems advisable under the circumstances. The other provisions of the contract are not affected and remain unchanged. In brief, *the rights of the parties which they had prior to serving the notice of intention to change remain the same during the period the proposal is under consideration, and remain so until the proposal is finally acted upon. The Board has stated in instances of this kind that the serving of a section 6 notice for a new rule or a change in an existing rule does not operate as a bar to carrier actions which are taken under rules currently in effect.*" NMB, 33d Ann. Rep. 36 (1968) (emphasis added).

As the Mediation Board indicated in the foregoing passage in its most recent annual report, it has been faced with the question presented here many times in the past in performing its duties under the Railway Labor Act. For example, on May 12, 1960, the Board issued instructions to its mediators in which it set forth its interpretation of the status quo provision in Section 6. See pp. 34a-37a, *infra*. Those instructions quoted the Board's response to a complaint that a railroad had violated its obligation to maintain the "status quo" by changing "territorial limits and assignments" following the service of a Section 6 notice regarding the matter (p. 35a, *infra*):

"The Board considered your letter of August 10, 1956 in Executive Session on August 16, 1956. The Carrier has taken the position that the proposed rearrangement of sections and the consequent changes in forces are permissible under the present agreement, and if a dispute exists as to the application of the present rules it should be taken before the National Railroad Adjustment Board.

"The National Mediation Board does not understand Section 6 of the Railway Labor Act to mean that proposed revisions of agreement rules and the invocation of this Board's services on such proposed changes has the effect of staying the application of existing rules unless and until such existing rules are amended or revised.

"In view of the language of Section 2, Seventh of the Railway Labor Act stating 'No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this act.', the Board fails to find any basis for complying with your request."

As indicated in its annual reports, the Board has consistently interpreted Section 6 in this fashion for many years.[10]

4. Moreover, we think it reasonably clear on the face of the Railway Labor Act that the decision below was in error—*i.e.*, that Section 6 means just what this Court said it meant in *Williams*. Prior to the service of a Section 6 notice, the carrier's obligations are governed by Section 2 Seventh of the Act (45 U.S.C. § 2 Seventh), which provides that "[n]o

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[10] At least one adjustment board established under Section 3 of the Act likewise has ruled that a Section 6 notice does not operate as a bar to carrier action taken under rules currently in effect. See pp. 38a-39a, *infra*. We are aware of no adjustment board decisions to the contrary.

carrier . . . shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act." (See p. 7, n. 5, *supra.*) The first sentence of Section 6 then provides that "[c]arriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions," and the second sentence of Section 6 goes on to provide that "[i]n every case where such notice of intended change has been given, . . . rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon . . . by the Mediation Board" (45 U.S.C. § 156).

The phrase "rates of pay, rules, or working conditions" in the second sentence of Section 6 is literally unrestricted. But Congress did not intend the phrase to be unrestricted in application. No one contends, for example, that service of a notice proposing a change in agreements relating to terminal points precludes a carrier from changing the number of men assigned to train crews if the parties' agreements permit such changes—*i.e.*, no one contends that the service of a Section 6 notice precludes a carrier from changing "working conditions" that are wholly unrelated to the subject matter of the notice. The question, therefore, is what restriction *did* Congress intend? The answer to that, we submit, is indicated by the context in which Congress used the phrase. Section 2 Seventh provides that no carrier "shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed . . . in Section 6," and Section 6 then prescribes the procedure by which changes in such rates of pay, rules, or working conditions *may* be effected. Accordingly, the phrase "rates of pay, rules, or working conditions," as used in the second sen-

tence of Section 6, should be read to mean what it means in Section 2 Seventh and the first sentence of Section 6—*i.e.*, rates of pay, rules, or working conditions that are fixed by the parties' agreements. That is what *Williams* held. See pp. 7-8, *supra*. Indeed, that construction of Section 6 was supported by virtually all relevant precedent until the decisions below in this case. See pp. 7-16, *supra*.[11]

5. As we said at the outset, there is no more important question before the courts today, with respect to railroad labor relations, than is presented by this case. That is demonstrated, we submit, by the substantial volume of recent litigation with respect to the issue, which we have cited above. See pp. 9-14, *supra*. The decision below will have far-reaching adverse effects on both railroad operations and collective bargaining.

It requires little imagination to appreciate the adverse effect on railroad operations if it should become the law, as the Sixth Circuit held in this case, that simply by serving a notice proposing the restriction of a carrier's rights under existing agreements a union can abrogate those rights for as long as it takes the parties to exhaust statutory procedures that are "purposely long and drawn out." *Railway Clerks* v. *Florida E. C. R. Co.*, 384 U.S. 238, 246 (1966). To take a single example from many that might be cited, in *Transportation-Communication Employees Union* v. *Illinois Central R. Co.*, p. 13, *supra*, pp. 60a-63a, *infra*, a railroad installed expensive computerized communications equipment that would greatly enhance its ability to serve the public efficiently and safely. The Telegraphers served the railroad with a notice proposing an agreement regulating the use of the equipment. The Telegraphers then sought an injunction, claiming that the status quo provision of Section 6 precluded the railroad from discontinuing older methods of communi-

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[11] See also Kroner, *Interim Injunctive Relief Under the Railway Labor Act*, 18 N.Y.U. Conference on Labor 179, 190.

cation and using the new equipment while the union proposal was pending. The court that decided the instant case apparently would have granted such an injunction. Yet it is generally accepted that in order to meet the nation's transportation needs, the railroad industry must do far more than it has to modernize its equipment and automate operations. See Ex Parte No. 256, *Increased Freight Rates,* 329 I.C.C. 854, 873-874 (1967). The decision below will interfere with that process. It will discourage operational changes intended to promote efficiency and safety.

Moreover, the decision below will have a stultifying effect on collective bargaining, because of the nature of the demands and claims it will encourage. The decision would permit a union, simply by serving a Section 6 notice, to obliterate rights under existing agreements and obtain unilaterally what the union may not even hope to obtain through bargaining. That is wholly inconsistent with the principal purpose of the "major" dispute procedures of the Railway Labor Act, to "avoid any interruption to commerce or to the operation of any carrier engaged therein" by requiring carriers and unions alike "to exert every reasonable effort to make and maintain agreements" (45 U.S.C. §§ 151a(1), 152 First). As this Court itself has observed, the "processes of bargaining and mediation" called for by the Act would "become a sham" if a party "could unilaterally achieve what the Act requires be done by the other orderly procedures." *Railway Clerks* v. *Florida E. C. R. Co., supra,* 384 U.S., at 247 (1966).

The dispute in *Telegraphers* v. *Chicago & N. W. R. Co.,* 362 U.S. 330 (1960), can be used to illustrate the point. In that case this Court upheld a Section 6 notice proposing an agreement that "[n]o position in existence on December 3, 1957, will be abolished or discontinued except by agreement . . . ." 362 U.S., at 332. In July 1960, after this Court's

decision, bargaining was resumed. Two years later, in July 1962, the parties exhausted the "major" dispute procedures, and the Telegraphers called a strike. Two months later an agreement was reached. Emergency Board No. 147, appointed by the President to investigate the dispute pursuant to Section 10 of the Railway Labor Act (45 U.S.C. § 160), did not recommend the "job freeze" requested by the Telegraphers (see Report of Emergency Board No. 147), and the parties' agreement did not give the Telegraphers such a "freeze". Yet, under the decision below, the Telegraphers would have had the "job freeze" requested in their notice by operation of law throughout the extended period of the negotiations, a period during which the railroad eliminated a substantial number of unneeded positions pursuant to the existing collective agreement. See Report of Emergency Board No. 147, p. 17. That result would have been particularly incongruous in view of the fact that the Telegraphers indicated in their brief in this Court that bargaining might modify their demands (see Petr. Br., No. 100, O.T. 1959, pp. 41-42), and their counsel testified during hearings involving this Court's decision that "as everyone knows, a proposal under the Railway Labor Act *is the starting point, not the end of* collective bargaining." *Hearings on S. 3548 before the Special Subcommittee of the Senate Judiciary Committee,* 86th Cong., 2d Sess., June 28, 1960, p. 186 (emphasis added).

We respectfully submit that this case warrants review by this Court.

Conclusion

For the foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDICES

APPENDIX A

Railway Labor Act

(45 U.S.C. § 151, *et seq.*)
(Excerpts)

GENERAL PURPOSES

SECTION 2 (45 U.S.C. § 151a). The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

SECTION 2 First (45 U.S.C. § 152 First). It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof .

* * * * *

SECTION 2 Seventh (45 U.S.C. § 152 Seventh). No carrier, its officers, or agents shall change the rates of pay, rules,

or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act.

• • • • •

SECTION 3 (45 U.S.C. § 153). First. There is hereby established, a Board to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

• • • • •

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

• • • • •

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

• • • • •

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers

and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of

the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon the award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

* * * * *

SECTION 5 (45 U.S.C. § 155). First. The parties, or either

party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in Section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * * * *

SECTION 6 (45 U.S.C. § 156). Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes

shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

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SECTION 10 (45 U.S.C. § 160). If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board

shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

APPENDIX B

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Decided October 7, 1968.

Before: McCREE and COMBS, Circuit Judges, and CECIL, Senior Circuit Judge.

COMBS, Circuit Judge. The Detroit and Toledo Shore Line Railroad [Shore Line] brought suit to enjoin a threatened strike by the Brotherhood of Locomotive Firemen and Enginemen [BLF&E]. The BLF&E counterclaimed, seeking to enjoin a change in work assignments proposed by Shore Line. The District Court dismissed Shore Line's complaint and issued the injunction sought by BLF&E, 267 F.Supp. 572 (1967). This appeal followed.

Shore Line's main line of railroad runs from Toledo, Ohio to Detroit, Michigan. Until 1961, all work assignments for Shore Line's crews started and ended at Lang Yard in Toledo. An increasing volume of business in Trenton, Michigan caused Shore Line to consider the establishment of a terminal there. A major difficulty in this regard stemmed from the fact that all of its work assignments for many years had originated at Lang Yard, thirty-three miles away. Thus, to service a train starting and ending its run in Trenton, it was necessary to transport the work crews to and from Lang Yard each day.

In 1961, Shore Line notified three unions representing its employees, including BLF&E, that certain designated work assignments would henceforth originate in Trenton. The unions served notice on Shore Line, pursuant to Section 6 of the Railway Labor Act, proposing certain special working conditions for employees who would operate out of Trenton. Conferences on these notices brought no agreement and the matter was referred to the National Mediation Board. While the case was pending before the Board, Shore Line established two new work assignments to origi-

nate in Dearoad, Michigan, eleven miles north of Trenton. The crews operating out of Dearoad were driven to Trenton by a taxicab service operated by Shore Line.

When the Dearoad work assignments were announced, the BLF&E withdrew from the Mediation Board proceedings and, before a Special Board of Adjustment, challenged Shore Line's right to establish the new work assignments.[1] It was asserted that these assignments were contrary to the collective bargaining agreement between the parties. On November 30, 1965, the Special Board ruled that the Shore Line-BLF&E bargaining agreement did not prohibit the establishment of outlying work assignments.

Shortly after the action by the Special Board, Shore Line revived its plan to originate work assignments out of Trenton. Learning this, BLF&E served a Section 6 notice on Shore Line, proposing an amendment to the existing collective bargaining agreement to the effect that "all road service runs and/or assignments will originate and terminate at Lang Yard. . . ." The parties, being unable to agree, submitted the matter to the National Mediation Board. Notwithstanding this action, Shore Line posted notices announcing two work assignments to originate at Trenton. The BLF&E threatened to strike and this action was initiated.

The District Court enjoined Shore Line from "establishing or operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established. . . ." The injunction was grounded on the Section 6 requirement that, following issuance of a notice under that section or the National Mediation Board's proffer of services, a carrier may not alter "rates of pay, rules, or working conditions" until Section 6 procedures have been exhausted.

Shore Line asserts that the District Court's decision is

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[1] The BLF&E decided to treat the controversy as a "minor dispute." Under Section 3 of the Railway Labor Act, such disputes are settled by an Adjustment Board whose interpretation of the contract is binding on the parties. See *Elgin, Joliet & Eastern Ry.* v. *Burley*, 325 U.S. 711 (1945).

erroneous for two reasons. First, it is contended that the status quo provision in Section 6 of the Act applies only to changes in "rates of pay, rules, or working conditions" which are embodied in the bargaining agreement, and that no terminal point is established in the bargaining agreement. We find this argument to be lacking in merit for the reasons stated in the opinion of the District Judge.

Second, it is argued by Shore Line that the establishment of a railway terminal is not bargainable because it is a managerial prerogative. This argument would have great force if the District Court's judgment prevented the company from constructing physical facilities known as a "terminal" or from using such facilities as a terminal. But such is not the case. The controversy here is focused on where work assignments will commence and end—the place where employees will report on and off duty. We find nothing in the correspondence between the parties, in the testimony of the witnesses, or in the opinion of the District Judge which would indicate that the judgment of the District Court should be given a broader meaning.

The question before the District Court was whether the place where employees for many years have originated and terminated their work days is a "working condition" which can be changed unilaterally by the employer without exhausting the bargaining procedures required by Section 6 of the Act. We note that it is stated by the District Judge in his opinion: "The proposed rule actually seeks to establish that all crewmen will report to duty at Lang Yard and not 35 miles north of Toledo."

It was held by the District Judge that this is a proper subject for bargaining and, as we construe the judgment, that is all that was held. We agree with the reasoning of the District Judge and with his conclusion.

Judgment affirmed.

APPENDIX C

Opinion of District Court on Motion to Vacate Judgment*

(Filed May 12, 1967)

YOUNG, J.:

This cause arises under various provisions of the Railway Labor Act. 45 U.S.C. §§ 151 et. seq. Plaintiff sued the Brotherhood of Railroad Trainmen (hereinafter referred to as the Trainmen), the Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the Firemen), and their respective officers for an order restraining them from striking. The Firemen counterclaimed for an injunction to prevent the plaintiff from violating the status quo provisions of the Act by unilaterally establishing a new terminal point, thereby changing the place where the employees would be required to go on and off duty. The action came on to be heard on October 7, 1966, and testimony and argument were heard at that time. This Court rendered an oral decision in which it refused to grant the injunction against the Unions, while finding for the Firemen on their counterclaim. On November 1, 1966, the findings of fact and conclusions of law of the Court were filed. Plaintiff has now moved for an order vacating the judgment with respect to the Firemen, and for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure.

Since rather complete findings of fact have already been made, only a short summary of the facts will be repeated here. For many years Lang Yard in Toledo, Ohio has been the terminal point for train and engine crews going on and off duty, and from which switching services for the Monsanto Chemical plant at Trenton, Michigan was performed. On February 21, 1961 the railroad notified both unions of its intention to establish a new terminal point at Edison Station in Trenton, Michigan. The unions thereafter joined in seeking an amendment of the collective bar-

* Reported at 267 F. Supp. 572.

gaining agreements to cover the changed working conditions pursuant to 45 U.S.C. § 156 by giving what is known as a section 6 notice. The services of the National Mediation Board were invoked but the parties failed to reach an agreement and declined arbitration. It is agreed that at this point the procedures with respect to the handling of the section 6 notice had been exhausted, and both the unions and the company were free to resort to self-help. Thereafter, certain other steps were taken by the Company and the Trainmen but this Court found that these related to the same basic dispute. This being the case, it was the Court's ruling that the dispute was a "major dispute" and that the Court therefore had no jurisdiction to enter an injunction against a strike by the Trainmen because of the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq. That determination is not an issue here since the plaintiff has asked for an order vacating the judgment only with respect to the Firemen.

The facts particularly relevant to the present motion are that on January 27, 1966, the Firemen served a new section 6 notice on the plantiff and that this time instead of seeking amendments to the bargaining agreement to cover the changed working conditions caused by the establishment of the new terminal point, sought to amend the agreement to establish Lang Yard as the sole terminal point for plaintiff's operations. The services of the National Mediation Board were again invoked and as of the date of the hearing, the matter was awaiting assignment of a mediator.

On September 19, 1966, plaintiff posted a bulletin advising the employees that Edison Station would be the new terminal point. This would mean that the employees would go on and off duty in Trenton, Michigan, some 30 to 40 miles north of Toledo where they had previously been based.

It was the holding of this Court that the unilateral action by the Company in posting the bulletin changing the terminal point after the services of the Mediation Board had been requested, violated the status quo provisions of sections 5 and 6 of the Act, providing that working condi-

tions shall not be altered by the carrier until the controversy has been finally acted upon by the Board and for 30 days thereafter. The plaintiff's petition was therefore denied with respect to the Firemen, and plaintiff was enjoined from operating a terminal point at Edison Station until the exhaustion of the procedures of the Act. It is this holding which is disputed by the present motion.

It is unnecessary in this case to discuss in detail the "major" and "minor" dispute dichotomy in the Railway Labor Act. Suffice to say that if the dispute is termed major, either party may initiate the procedures of the Act by the service of a notice to change the contract pursuant to Section 6.[1] If settlement cannot be reached in conference, the matter is referred to mediation under the auspices of the National Mediation Board. 45 U.S.C. § 155 (1964). The procedure for handling major disputes is designed to assist the parties in reaching agreement, and there is no authority to decide the dispute for the parties unless they agree to submit to arbitration.

After the parties have exhausted the procedures of the Act, they are free to resort to self-help and the courts may not enjoin a strike by the union nor a unilateral change in rates of pay, rules and working conditions by the carrier. *Brotherhood of Locomotive Engineers* v. *Baltimore & O.R.R.*, 372 U.S. 284 (1963); *Order of R.R. Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330 (1960). However, pending exhaustion of such machinery, the parties are required to maintain the status quo. Thus, while the parties are in the process of exhausting the proceedings described above, the railroad may not unilaterally change the rates of pay, rules or working conditions and a court may enjoin such action. 45 U.S.C. §§ 155, 156 (1964); *United Industrial Workers of Seafarers* v. *Board of Trustees*, 368 F.2d 412 (5th Cir. 1966).

Plaintiff argues that the present controversy is neither a major nor a minor dispute but rather that it involves a matter of management prerogative.

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[1] 45 U.S.C. § 156 (1965).

For the procedures of the Railway Labor Act to be applicable there must first be a "labor dispute." Thus, for example, if management decided to install new machinery which did not in any way affect the terms or conditions of employment nor violate the collective bargaining agreement, it could do so without prior consultation with the union. If the union takes strike action concerning a non-bargainable matter, a court may issue a strike injunction because the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, preventing injunctions in "labor disputes" is not applicable. See *Chicago & N.W. Ry.* v. *Order of R.R. Telegraphers*, 264 F.2d 254, 260 (7th Cir. 1959), *rev'd on other grounds*, 362 U.S. 330 (1960).

The Supreme Court case of *Order of R.R. Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330 (1960) involved facts which were substantially similar to the case at bar. In that case the railroad filed petitions with the public utility commissions in several of the states in which it operated asking permission to eliminate certain of its railroad stations. Recognizing that the plan would result in a loss of jobs, the union gave a Section 6 notice to amend the bargaining agreement to state that no position could be abolished or discontinued except by agreement between the carrier and the organization. The Court held that the case grew out of a "labor dispute" and that by reason of the Norris-LaGuardia Act, the district court was without authority to enjoin the strike.

The Norris-LaGuardia Act defines a labor dispute as follows:

> "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. . . ."[2]

The Court said that the controversy clearly involved an effort to change the terms of an existing agreement, and

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[2] 29 U.S.C. § 113(c).

that that term related to a condition of employment. Furthermore, the trend has been to broaden, not narrow the scope of subjects about which workers and railroads may bargain collectively. The Court finally noted that it is "too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of the employees. . . ."[3]

Plaintiff attempts to distinguish the *Railroad Telegraphers* case by pointing out that the union there only objected to the abolition of jobs, and did not seek a veto over the carrier's right to determine the location of stations, while in the present case the Firemen seek to amend the agreement to make Lang Yard in Toledo the sole terminal point. The proposed rule actually seeks to establish that all crewmen will report to duty and go off duty at Lang Yard and not 35 miles north of Toledo. Certainly this is a proper subject for bargaining. The controversy concerns the terms of a proposed change in the collective bargaining agreement, and those terms relate to a condition of employment.

Plaintiff argues that *Brotherhood of R. R. Trainmen* v. *New York Cent. R. R.*, 246 F.2d 114 (6th Cir.) *cert. denied*, 355 U.S. 877 (1957) is controlling in this circuit. This Court believes, however, that that case was overruled by the *Railroad Telegraphers* case, and that the present controversy is a labor dispute not involving a matter solely within the discretion of management.

The second contention of the railroad is that even assuming we are dealing with a labor dispute, and that it is a "major dispute," its own action in establishing a terminal at Trenton prior to the termination of mediation with respect to the Firemen's 1966 notice did not violate the status quo provisions of sections 5 and 6 of the Act. The position of plaintiff is that its contract with the Firemen does not prohibit the establishment of new terminals for road service assignments, and that the status quo requirements of section 6 prohibit only changes in rates of pay, rules, or

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[3] 362 U.S. 330, 339 (1960).

working conditions fixed by the parties' collective bargaining agreement. In other words, section 6 applies only when the proposed change in the agreement directly conflicts with a provision of the present contract. In support of this contention plaintiff cites a report of the National Mediation Board which reads in part as follows:

> "Section 6 states that where notice of intended change in an agreement has been given, rates of pay, rules, and working conditions *as expressed in the agreement* shall not be altered by the carrier until the controversy has been finally acted upon in accordance with specified procedures. Positively stated, section 6 is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with."[4] (Emphasis added.)

But the phrase "as expressed in the agreement" does not appear in section 6 of the Act, and this language appears to have been added by the Board. This Court does not think that such a limitation on the application of the status quo requirements is sound. The general scheme of the statute indicates that the purpose of the status quo provision is to aid the National Mediation Board in its function of helping the parties to reach an agreement. If the carrier can unilaterally change the working conditions of its employees while such conditions are the subject of mediation efforts by the Board, the work of the Board would be greatly hampered. Thus, it would appear that whenever the services of the Board have been invoked, its jurisdiction should be protected by the application of the provisions of section 6 even if the particular condition is not fixed by the existing agreement. There is no reason why the status quo provisions should not apply whenever the Board is mediating a dispute.

Furthermore, the limitation which the plaintiff places on the application of the status quo provision is unsupported by case law. In *Williams* v. *Jacksonville Terminal,* 315

[4] Thirty-First Annual Report of the National Mediation Board 25 (1965).

U.S. 386 (1942) the Court did state that the prohibitions of section 6 against changes in wages and working conditions pending bargaining are aimed at "preventing changes in conditions previously fixed by collective bargaining agreements."[5] However, the facts in that case were not even remotely analogous to the present situation, and the legal issues were different. There had been no previous collective bargaining agreement and there was no history of bargaining between the terminal and certain of its employees called "red caps." However, on October 11, 1938 the red caps notified the terminal that they had selected a union to represent them. The union representative then asked for a conference for the purpose of negotiating a collective bargaining agreement. But no section 6 notice was ever given because there was no existing agreement to amend. The carrier thereafter delivered to each red cap a letter stating that his weekly wage in the future would be the difference between the minimum wage set by the newly enacted Fair Labor Standards Act and the amount of tips received by him each week. An agreement was subsequently reached with regard to working conditions and hours but it omitted any reference to wages. The union representative then sued the terminal for wages due to the red caps under the Fair Labor Standards Act. The union contended among other things that the railroad could not apply the tips to the minimum wage figure because to do so violated the status quo provisions of the Railway Labor Act. The Court held that section 6 did not apply. This result is quite logical because section 6 applies only to intended changes in collective bargaining agreements and there was no agreement in existence to change. The decision of the Court, however, is not relevant to the present controversy, because the Firemen and the plaintiff have an agreement in effect and a section 6 notice has been given proposing that it be changed. The Board's services have therefore properly been invoked, and its jurisdiction to mediate should be protected.

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[5] 315 U.S. 386, 402-403 (1942).

The case of *Norfolk & Portsmouth Belt Line R.R.* v. *Brotherhood of R.R. Trainmen,* 248 F.2d 34 (4th Cir.) cert. denied, 355 U.S. 914 (1957), is also not in point. The Court used language which supports plaintiff's contention but it is dictum, since the final determination was that the controversy was a minor dispute.

Thus, the language which the Board read into the Act in its report cited above is supported neither by sound reasoning nor by case law. Therefore, this Court will not limit the application of the status quo provisions which are clearly set forth in section 6.

The plaintiff's motion for an order vacating the judgment of this Court entered on November 16, 1966 and for a new trial will therefore be denied.

DON J. YOUNG,
United States District Judge.

Toledo, Ohio.

APPENDIX D

Oral Decision of District Court

(October 7, 1966)

Young, J.

[2] Gentlemen, I have been considering this matter, the arguments of counsel as well as the various authorities that have been cited, and those citations I have explored for myself. The Court has come to some conclusions which I think should be dispositive of the matter.

Actually, we have two separate cases here before us. This was pointed out in argument and is emphasized by the fact that there are two separate Answers filed. One of the Answers has with it a Counterclaim or Cross-Petition.

So that I am going to consider my disposition of the case as involving two separate matters which will require separate disposition.

The first of the two matters is the Complaint with respect to the actions of the Brotherhood of Railroad Trainmen; at least that is the one that I am going to consider first.

[3] The problem there, of course, is raised by the prayer of the Complaint for an Injunction restraining the Brotherhood from an alleged threat to strike over a dispute that was precipitated by a bulletin posted by the plaintiff on September 19th of this year providing that certain work assignments were going to have their terminal at the Edison Yard at Trenton, Michigan.

While there are apparently some differences between these two locations, it is too trivial to give any consideration to.

The problem here is simply another facet, it seems to the Court, of a long-standing dispute that has occurred between the parties, starting way back in 1961, or perhaps even before that.

It is argued that the 1961 matter is all over and done with and that the current dispute is an entirely new one.

It is difficult for me to accept that interpretation of the facts that are on the record in this case.

The problem here, as the Court sees it, is that the plaintiff's claimed right to establish terminals wherever it wants to establish them leaves gaps in the agreements between the plaintiff and the defendant Brotherhood, because the agreement actually only sets up rates of pay and working [4] conditions for operations out of one main terminal.

So that we have, in effect, a situation where there is no agreement between the parties which could determine the difficulties between them.

When we come to consider that dispute in the light of the applicable law, we run into the difficulty that on such matters—that is, matters where there is no agreement between the parties and an agreement has to be negotiated—the Norris-LaGuardia Act and th Railway Labor Act do not seem to contemplate that the Court only has jurisdiction to interfere with other procedures used to resolve those difficulties.

Sometimes the language is used "major disputes and minor disputes," and while the Court may intervene in minor disputes to see that the provisions of the law are carried out, the Court may not intervene when there is a major dispute between the parties. That appears clearly to me to be the situation here, that there is, and for a long tim there has been a major dispute between these parties.

The dispute has flared up and been in abeyance from time to time, depending on the actions that were taken by the parties on one side or the other to exacerbate the underlying difficulties, but it never has been resolved in the [5] way disputes are supposed to be resolved by the parties' rights under the law to self-help, and this Court has come to the conclusion that that being the case here, it has no jurisdiction to grant the relief prayed for in the plaintiff's Complaint.

Insofar as the Complaint involves a dispute with the Trainmen, it will be dismissed.

The situation with respect to the Complaint against the Brotherhood of Firemen and Enginemen presents a considerably different situation, a different problem.

I was unable to find from the evidence before me that the Brotherhood of Firemen and Enginemen had made any threat to strike. What they had done, apparently some time ago, in the spring of this year, was to make a so-called Section VI complaint to the National Mediation Board. That was duly docketed and a number was assigned to it; as I recall, it was numbered A7839. That matter is now pending the appointment of a mediator.

Under those circumstances, I don't see how a court could have any jurisdiction to grant relief to the plaintiff on their Complaint for an Injunction.

In the first place, if the processes of the law have not [6] yet been exhausted, there would be considerable doubt of the Court's jurisdiction. In the second place, if there really isn't any threat, then there is nothing for the Court to enjoin.

So that, again, as to the plaintiff's Complaint against the Brotherhood of Firemen and Enginemen, the Court is constrained to the view that the Complaint must be dismissed.

However, that does not dispose of all the issues that are raised in that matter, because the Brotherhood, in addition to its Answer which seeks the dismissal of the Complaint, has filed a Counterclaim seeking positive relief against the railroad on their behalf.

Their contention is that, having commenced proceedings under the Railway Labor Act, the provisions of the Act require that the matter should remain in status quo until all those procedures have been terminated, and for thirty days thereafter neither party has the right: (a) the railroad to change wages or working conditions, or (b) the union to strike.

The railroad's contention, the plaintiff's contention, in response to that is that this particular matter, that of establishing a terminal at Trenton or the Edison Yard, is [7] not a condition of employment in which the law requires that the status quo be maintained.

There doesn't appear to be any case law that precisely covers that situation, certainly not as applying to the facts in this case.

The plaintiff relies upon a statement in the report of the Labor Board about the matter, but that statement, when taken in context, is based on reading language into the statute which does not appear in the words of the statute itself.

So that this Court apparently has got to take a pioneering position and establish a rule; whether it be a precedent or whether it will stand, there is no way of telling.

But it seems to me that when we look at this thing as a whole and examine the history of it, as shown by the evidence in the record, the question of establishing this terminal at Trenton—while it is arguable, and might even be said to be conceded that the plaintiff had a right to establish terminals wherever it wants to—yet again, when we go back to the contract there isn't anything providing for the working conditions and rates of pay and things of that nature at those other terminals.

[8] So the Court has come to the conclusion that if it were to hold that the plaintiff had a right to go ahead and start doing the things that it proposed in its Bulletin of September 19, 1966 to do, that both as a legal and as a practical matter it would be changing the conditions of employment, because some men would have to be working out of that Yard. They would have to get there the best way they could, or they would have to move from where they now live if they didn't want to commute 35 miles or so back and forth. Certainly where a man lives when he goes to work is one of the conditions of his employment, and, it seems to me, a rather major condition of employment.

So that I feel constrained to grant to the Brotherhood of Firemen and Enginemen the relief that they seek in their Counterclaim, that is that until the processes which are established by statute for working out the dispute between them and the plaintiff have been completed that there should be no change in the practices and the conditions that for many, many, many years have governed the carrier's operation and the work of the members of the defendant unions under it.

I feel that the Court has no alternative except to grant

[9] to the defendants the relief that they are seeking by their Counterclaim.

It appearing that the defendants are the prevailing parties under the disposition I have just expressed, I will require that the defendants draft Findings of Fact and Conclusions of Law which are expressive of the Findings and Conclusions so delivered orally by the Court. They should submit those within ten days to the plaintiff. The plaintiff may then have an additional ten days to offer, if they desire, their version of what they believe are proper Findings of Fact and Conclusions of Law.

Upon receiving the Conclusions of both parties, or if the plaintiff accepts those submitted by the defendants, upon receiving the Conclusions expressed by the defendants, the Court will then enter an Order upon the Findings and Conclusions.

APPENDIX E

Judgment of Court of Appeals

(Filed October 7, 1968)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 18,059

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, *Plaintiff-Appellant,*

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ET AL., *Defendants-Appellees.*

BEFORE: McCREE and COMBS, Circuit Judges and CECIL, Senior Circuit Judge.

JUDGMENT

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.

CARL W. REUSS,
Clerk.

APPENDIX F

Findings of Fact Conclusions of Law, and Judgment of District Court

(Filed November 1, 1966)

Pursuant to Rule 52(a), the court hereby enters the following findings of fact and conclusions of law which constitute the grounds for its previously announced decision herein.

Findings of Fact

1. Plaintiff is a Michigan corporation with its principal office in Detroit, Michigan, and is a common carrier by railroad engaging in interstate commerce. Plaintiff operates its trains over its line of railroad between Lang Yard in Toledo, Ohio, and Detroit, Michigan, and over the lines of other railroads to other points in the State of Michigan.

2. Defendant Brotherhood of Locomotive Firemen and Enginemen (sometimes hereinafter referred to as the "Firemen") is a voluntary unincorporated association and labor organization, and is the only authorized representative, for purposes of collective bargaining under the Railway Labor Act, of the crafts or classes of railway engineers, firemen and hostlers employed by plaintiff; defendant H. E. Gilbert is President of the Firemen; and defendant E. F. Gensler is General Chairman of the Firemen on the property of plaintiff railroad.

3. Defendant Brotherhood of Railroad Trainmen (sometimes hereinafter referred to as the "Trainmen") is a voluntary unincorporated association and labor organization, and is the only authorized representative, for purposes of collective bargaining under the Railway Labor Act, of the crafts or classes of trainmen and yardmen employed by plaintiff; defendant Charles Luna is President of the Trainmen; and defendant William Upham is General Chairman of the Trainmen on the property of plaintiff railroad.

4. At all times material hereto each of said Brotherhood

defendants has been a party to separate collective bargaining agreements with plaintiff governing rates of pay, rules and working conditions of the separate crafts or classes of employees represented as aforesaid.

5. For many years prior to 1961, Lang Yard in Toledo, Ohio, was the terminal point, for train and engine crews going on and off duty, from which plaintiff operated to perform switching service for the Monsanto Chemical Company plant at Trenton, Michigan, where no terminal point had previously been established or operated by plaintiff. Under date of February 21, 1961, plaintiff advised defendant Brotherhoods of its intention to establish such a terminal point at Edison Station, in Trenton, Michigan, and inquired as to the facilities that would be required for employees going on and off duty at that point.

6. Under date of April 28, 1961, defendant Brotherhoods joined in serving on plaintiff, pursuant to Section 6 of the Railway Labor Act, a notice seeking amendment of existing collective bargaining agreements so as to cover changed working conditions of employees affected by the proposed establishment of a new terminal point. This notice was implemented by written proposals for specific benefits for such employees served on plaintiff under date of June 8, 1961.

7. Negotiations on said notice and proposals, and mediation thereon under the auspices of the National Mediation Board, failed to result in any agreement of the parties, and under date of January 1, 1963, said Board advised the parties, including plaintiff, of the failure of its mediatory efforts, and in accordance with Section 5, First, of the Railway Labor Act, requested the parties to submit the controversy to arbitration. All parties having declined arbitration, said Board, under date of March 4, 1963, notified the parties that, except as provided in Section 5, Third, and in Section 10 of the Act, the Board's services had that day been terminated. On April 3, 1963, said Board notified the parties of the closing of its file in the matter, which it had docketed as National Mediation Board Case No. A-6755. At the hearing herein, it was conceded by plaintiff that at that stage all of the provisions of the Railway Labor Act

governing the handling and processing of the major dispute initiated by defendants' Section 6 notice of April 28, 1961, had been exhausted, and that employees of plaintiff represented by defendant Brotherhoods were at that time legally free to strike.

8. Plaintiff's rejection of arbitration of said dispute had been coupled with a representation by it that its plans to establish a terminal point at Edison Station, Trenton, Michigan, had been abandoned, and that the dispute was therefore moot; and for some time no further action in connection with such dispute was taken by plaintiff or defendants. On December 16, 1965, a new written proposal for an agreement establishing conditions to be observed in establishment of a terminal point at Trenton (Edison Station) was given plaintiff by the Trainmen, which, though embodying conditions differing in part, at least, from those contained in the June 8, 1961, proposal, related to the same basic major dispute. These proposals were rejected by plaintiff.

9. In the meantime, defendant Firemen had withdrawn their Section 6 notice of April 28, 1961, and invocation of the National Mediation Board's services in connection therewith, and on January 27, 1966, served a new Section 6 notice on plaintiff calling for amendment of the Firemen's collective bargaining agreement so as to establish Lang Yard, Toledo, Ohio, as the sole terminal point for plaintiff's operations. Negotiations on that proposal failed to result in agreement, and under date of June 17, 1966, the Firemen formally invoked the services of the National Mediation Board in connection therewith. Under date of June 28, 1966, plaintiff and the Firemen were advised by said Board that the dispute had been docketed as National Mediation Board Case No. A-7839, and as of the date of the hearing herein said matter was awaiting assignment of a mediator by the Board.

10. Under date of September 19, 1966, plaintiff posted a bulletin directed to its employees advising of the establishment of a new train assignment, to operate out of Edison Station, Trenton, Michigan, as its terminal point, to be effective September 26, 1966. On September 23, 1966, plain-

tiff submitted to the National Railroad Adjustment Board a purported dispute with the Trainmen as to plaintiff's right, under its agreement with the Trainmen, to unilaterally establish new terminal points. On the same day this suit was filed, seeking an injunction against an alleged threatened strike by both defendant Brotherhoods.

11. At the hearing herein plaintiff conceded that the case involves separate causes of action, based on completely different relevant facts, against the Trainmen defendants and the Firemen defendants. Each group of defendants filed separate answers, and that of the Firemen incorporated a counterclaim against plaintiff seeking to enjoin it from unilaterally establishing the proposed terminal point at Trenton pending exhaustion of the procedures of the Railway Labor Act in connection with the aforementioned dispute currently pending before the National Mediation Board as its Case No. A-7839.

Conclusions of Law

1. Plaintiff invokes the jurisdiction of this Court under the Judicial Code (28 U.S.C., Secs. 1331 and 1337), the Interstate Commerce Act (49 U.S.C., Secs. 1 et seq.), and the Railway Labor Act (45 U.S.C., Secs. 151 et seq.).

2. Plaintiff is a common carrier by railroad in interstate commerce, and is subject to the provisions of the Railway Labor Act.

3. As to both the Firemen and the Trainmen defendants, their respective disputes with plaintiff, though separate and distinct, are primarily concerned with the amendment of existing collective bargaining agreements, and as such are "major disputes" subject to handling in accordance with the provisions of Section 6 and Section 5 of the Railway Labor Act. (*Elgin, Joliet and Eastern R. Co.* v. *Burley*, 325 U.S. 711.)

4. Under said Act, after exhaustion of the machinery provided for the handling of such disputes, without agreement being reached, both parties become legally free to resort to self help, including the right of employees to strike and the right of the carrier to place in effect unilateral changes in rates of pay, rules and working conditions.

(*Railroad Telegraphers* v. *Chicago and North Western Railroad Co.*, 362 U.S. 330; *Brotherhood of Locomotive Engineers* v. *B. & O. R.R. Co.*, 372 U.S. 284.) Pending exhaustion of such machinery, the "*status quo*" is to be maintained by both parties. (Railway Labor Act, Sec. 6 and Sec. 5; *Butte, Anaconda & Pac. Ry. Co.* v. *Brotherhood of L.F. & E.*, 168 F. Supp. 911, aff'd. 268 F. (2d) 54; *Baltimore & Ohio R. Co.* v. *United Railroad Wkrs., etc.*, 271 F. (2d) 87, 90.)

5. With respect to the Trainmen defendants, the current dispute is over working conditions to be agreed upon in connection with plaintiff's establishment of a new terminal point at Trenton, Michigan, and is the same basic major dispute that was handled through all of the procedures of the Railway Labor Act to the maturing of said defendants' admitted right to strike in 1963. There being no prohibition in said Act against the right of the Trainmen to strike, and the jurisdiction of the court to grant injunctive relief in such circumstances being withdrawn by the provisions of the Norris-LaGuardia Act (29 U.S.C., Sec. 101 et seq.), the Trainmen's right to strike to obtain agreement of plaintiff upon such conditions may not be enjoined. (See *General Committee, B.L.E.*, v. *Missouri-K.T. R. Co.*, 320 U.S. 323, 332-333; *Missouri-Illinois R. Co.* v. *Order of Railway Conductors*, 322 F. (2d) 793; *Pan American World Air.* v. *Flight Eng. Intern. Assoc.*, 306 F. (2d) 840; and cases cited above.)

6. Plaintiff's submission to the National Railroad Adjustment Board, coincidentally with the filing of this action, of a purported dispute with the Trainmen over its right to unilaterally establish a new terminal at Trenton, Michigan, by its terms does not deal with the establishment, by contract, of new working conditions at Trenton; and there is no evidence on the record herein to support the existence of any such contract interpretation dispute with the trainmen as that described in plaintiff's submission to said Adjustment Board. The jurisdiction of the National Railroad Adjustment Board does not extend to major disputes, such as that here involved, relating to the amendment of provisions of existing agreements. (*Elgin, Joliet and Eastern*

R. Co. v. *Burley, supra; General Committee, B.L.E.* v. *Missouri-K.-T. R. Co., supra.*)

7. With respect to plaintiff's cause of action against the Firemen defendants, the court finds that plaintiff, having failed to comply with the *status quo* requirements of Sections 6 and 5 of the Railway Labor Act, with reference to handling of major disputes, is barred by the provisions of the Norris-LaGuardia Act, and particularly Section 8 thereof (29 U.S.C. Sec. 108) from obtaining any injunctive relief.

8. With respect to the counterclaim of the Firemen defendants against plaintiff, the court finds that in instituting Trenton, Michigan, as a new terminal point on September 26, 1966, pursuant to its bulletin of September 19, 1966, plaintiff effected a change in rates of pay, rules and working conditions, and established practices in effect prior to the time the dispute arose, which were the subject of the pending National Mediation Board Case No. A-7839, in violation of the *status quo* provisions of Section 6 and Section 5 First (b) of the Railway Labor Act, and should be enjoined to desist and refrain from such violation pending exhaustion of the major disputes handling procedures of said Act. It is well established that the court has jurisdiction to grant injunctive relief "to compel compliance with positive mandates of the Railway Labor Act". (*Graham* v. *Brotherhood of Locomotive Firemen and Enginemen,* 338 U.S. 232, 237.)

9. In view of the foregoing findings and conclusions, an order will be entered dismissing plaintiff's action for injunction against defendants, and, on the Firemen defendants' counterclaim, enjoining and restraining plaintiff from operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established, unless and until its pending major dispute with the Firemen, involved in National Mediation Board Case No. A-7839, has been fully handled to a conclusion, and the right of the parties thereto to resort to self-help has been matured, by exhaustion of the procedures of Sections 6 and 5 of the Railway Labor Act, unless said dispute be earlier resolved by agreement between plaintiff and the Firemen.

DON J. YOUNG,
United States District Judge.

Judgment and Decree

(Filed November 15, 1966)

This cause came on to be heard on October 6, 1966, by agreement of the parties, on the merits of plaintiff's complaint for injunction, the answer of defendants, and the counterclaim of defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler for an injunction against plaintiff, and having been tried before the Court, argued by counsel, and considered by the Court, and the court having announced its opinion and having entered its findings of fact and conclusions of law in accordance therewith, now, therefore, it is ordered, adjudged and decreed that plaintiff shall not have any relief in this action, and that the same shall be and hereby is dismissed on the merits as to all defendants.

It is further ordered, adjudged and decreed that the counterclaim of said defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler should be and hereby is sustained, and that plaintiff, its employees, agents or representatives, and anyone acting by, through or for it, or on its behalf, be and they hereby are enjoined and restrained from establishing or operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established, unless and until its pending major dispute with said Brotherhood of Locomotive Firemen and Enginemen, involved in National Mediation Board Case No. A-7839, has been fully handled to a conclusion, and the right of the parties thereto to resort to self-help has been matured, by exhaustion of the procedures of Sections 6 and 5 of the Railway Labor Act, unless said dispute be earlier resolved by agreement between plaintiff and said Brotherhood.

DON J. YOUNG,
United States District Judge.

APPENDIX G

Award of Special Board of Adjustment No. 375

(November 30, 1965)

Parties To Dispute:

The Brotherhood of Locomotive Firemen and Enginemen.
The Detroit and Toledo Shore Line Railroad Company.

Statement of Claim:

"Formal protest of Bulletin No. 1192, dated September 24, 1963, wherein the Carrier advertises a Work Train to operate out of Dearoad, contrary to agreement and all practices of the past.

"In connection therewith, also accept this as a Committee claim on behalf of all enginemen for any loss sustained thereunder, should the aforementioned bulletin be placed in effect."

Findings:

What took place here was not a change in the recognized terminal, but simply amounted to an outlying assignment. There is nothing in the rules of agreement which precludes this carrier from establishing an outside assignment.

The employes laid particular stress on their Exhibit 8, but close examination of same does not indicate to the majority that the Carrier limited itself with respect to establishing outside assignments. Said Exhibit 8 reflects that a limited agreement between the parties to set-up a five-day assignment at a date prior to the five-day work week was effectuated.

Award of SBA No. 375

Award:

The claim is denied.

DAVID R. DOUGLAS, *Neutral Member*

C. J. MCPHAIL,
Carrier Member

D. C. DEERING,
Employe Member
(I dissent)

Detroit, Michigan—November 30, 1965

APPENDIX H

National Mediation Board Instructions to Mediators

May 12, 1960.

To: All Mediators

From: E. C. Thompson, Executive Secretary

Section 6 of the Railway Labor Act states:

> "In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

The Board's policy in regard to the "status quo" provision quoted above is outlined in the following letters:

"August 17, 1956

"File No. C-2511

"Mr. T. C. Carroll, President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit 3, Michigan

Dear Mr. Carroll:

"Reference is made to your letter of August 10, 1956, in connection with our File C-2511 which covers your application for mediation dated July 27, 1956 in connection with a dispute between your organization and the Atchison,

National Mediation Board Instructions

Topeka & Santa Fe Railway Company, Panhandle & Santa Fe Railway Co. and Gulf, Colorado & Santa Fe Railway Co. which you described on your application as follows:

> " 'Failure of management to maintain status quo with respect to territorial limits and assignments currently in effect, and to dispose of our Formal Notice dated April 23, 1956, without undue delay.'

"The Board considered your letter of August 10, 1956 in Executive Session on August 16, 1956. The Carrier has taken the position that the proposed rearrangement of sections and the consequent changes in forces are permissible under the present agreement, and if a dispute exists as to the application of the present rules it should be taken before the National Railroad Adjustment Board.

"The National Mediation Board does not understand Section 6 of the Railway Labor Act to mean that proposed revisions of agreement rules and the invocation of this Board's services on such proposed changes has the effect of staying the application of existing rules unless and until such existing rules are amended or revised.

"In view of the language of Section 2, Seventh of the Railway Labor Act stating 'No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this act.', the Board fails to find any basis for complying with your request.

"The Board does feel, however, that the carriers should not unduly delay completion of negotiations on the changes requested in your General Chairman's letter of April 23, 1956, and urges the carriers to arrange to meet your representatives and complete negotiations at the earliest practicable date.

National Mediation Board Instructions

"Copy of your letter of August 10, 1956 is being sent herewith to Messrs. Tucker, Buchanan and Olson of the carriers with copy of this letter.

"By direction of the NATIONAL MEDIATION BOARD.

"s/ E. C. THOMPSON
Executive Secretary"

"June 19, 1957

"A-5498

"Mr. C. R. Tucker, Vice President Operations
Atchison, Topeka and Santa Fe Railway
80 East Jackson Blvd.
Chicago 4, Illinois

"Mr. Geo. M. Harrison, Grand President
Brotherhood of Railway & Steamship Clerks
1055 Vine Street
Cincinnati 2, Ohio

Gentlemen:

"Reference is made to application for mediation filed by the Brotherhood of Railway & Steamship Clerks on June 5, 1957 in a dispute between that organization and the Atchison, Topeka and Santa Fe Railway Company described in the application as follows:

> 'Request of employes that the Carrier enter into an agreement with respect to its transfer of certain work and positions from Los Angeles, California, to Topeka, Kansas, and that such agreement be as set forth in letter dated May 6, 1957, attached hereto and designated "Exhibit A-1" as modified in letter dated May 17, 1957, attached hereto and designated "Exhibit A-2" both of which are made a part hereof.'

"As we understand it this application was intended to cover the proposals made by the General Chairman of the

organization to Mr. W. G. Hunt, General Auditor of the Atchison, Topeka and Santa Fe Railway Company in his letter to Mr. Hunt of May 6, 1957, this letter being superseded by letter from the General Chairman to Mr. Hunt of May 17, 1957.

"The latter letter proposed the negotiation of an agreement between the parties providing certain benefits and protection for employees in the Accounting Department of the Santa Fe at Los Angeles who are proposed to be moved from Los Angeles to Topeka, Kansas. The carrier was advised of this application in our letter of June 7, 1957 and the carrier's reply of June 14, 1957 was received in this office on June 17, 1957. A copy of Mr. Tucker's letter of June 14 to this office is being sent to Mr. Harrison for his information. Mr. Harrison will note from Mr. Tucker's letter that the carrier's position is that the transfer of the employees from Los Angeles to Topeka will be made in accordance with the rules now contained in the current agreement between the parties.

"This application has been considered by the Board and on the basis of the proposal made to General Auditor Hunt in Mr. Byrne's letters of May 6 and May 17, 1957 the Board has directed that Mr. Harrison's application be docketed as Case No. A-5498.

"With reference to the question of maintenance of status quo as mentioned in Mr. Harrison's letter of June 5, 1957, it is not the Board's understanding of Section 6 that an invocation for its services has the effect of staying action under existing rules or renders compliance with existing rules a violation of the Railway Labor Act.

"A mediator will be assigned to commence the handling of this case in Chicago at an early date.

"Very truly yours,

"s/ E. C. THOMPSON
Executive Secretary"

APPENDIX I

Special Board of Adjustment No. 465

PARTIES TO DISPUTE:

Boston and Maine Corporation and Brotherhood of Railroad Trainmen

Claim T-6709

Award No. 293

STATEMENT OF CLAIM:

Claims of Yard Foreman J. G. Morris, Manchester Yard, for one day's pay, on October 9, 1958 and subsequent dates, account of being displaced off the 9:30 p.m. Manchester Switcher by a man from Nashua Yard who lost his regular assignment because the 5:30 a.m. Nashua Switcher was reduced from three to two men effective October 8, 1958. Claims for all subsequent claimants and subsequent claim dates.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

The Board finds that there is no crew consist rule in yard service on this property. The First Division in Award No. 17886 states that in the absence of a crew consist rule, it is a managerial function to determine the number of men that will be required in a crew complement. The Organization's contention that, due to the fact that a Section 6 notice has been filed by it and the Section 6 notice is now being handled by the National Mediation Board, the

serving of the notice operates as a bar to the Carrier's actions which are taken under rules currently in effect is not well founded and has been dealt with by the National Mediation Board when it stated that the serving of a Section 6 notice does not operate as a bar under existing rules. (See report of National Mediation Board for year ending June 30, 1964, page 29).

AWARD

Claims denied.

THOMAS C. BEGLEY,
Chairman

W. J. AHEARNE,
Carrier Member

W. J. WEIL,
Organization Member

Issued at Boston, Massachusetts, this 12th day of September, 1966

APPENDIX J

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Plaintiff v. Atchison, Topeka and Santa Fe Railway Company, Defendant. *

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil No. 64-C-669, May 8, 1964

LABUY, D. J.: This matter coming on to be heard on the verified complaint and on the amendment to the complaint and the verified Answer thereto, and the court, having set the matter for hearing, having heard the evidence and considered the briefs submitted by counsel, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. Plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter called Clerks, an unincorporated association, is a "representative" within the meaning of § 1, Sixth, 45 U. S. C. § 151, of the Railway Labor Act, 45 U. S. C. §§ 151 et seq. and does business within this judicial district.

2. Defendant, the Atchison, Topeka and Santa Fe Railway Company, hereinafter called Santa Fe, a Kansas corporation with its principal place of business in Topeka, Kansas, is an interstate carrier by rail and a "carrier" within the meaning of § 1, First, of the Railway Labor Act and does business within this judicial district.

3. Clerks represent for purposes of collective bargaining under the Railway Labor Act all employees of Santa Fe in the craft or class of clerks or clerical employees, and

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* 50 CCH Lab. Cas. ¶ 19,299.

the current basic collective agreement between Santa Fe and Clerks is contained in a small printed booklet dated November 1, 1963.

4. Collective bargaining agreements in the railroad industry generally do not have fixed expiration dates. They are referred to as "open-end" contracts, and continue in effect until changed. The current agreement between the Clerks and Santa Fe is such an agreement, and Rule 56 thereof expressly provides that it is to continue in effect until changed as therein provided or as provided in the Railway Labor Act.

5. Santa Fe owns in Chicago, Illinois, a freight house designated "Corwith Freight House No. 2" (Corwith) which includes a main building constructed in 1956 and an addition referred to as the "X dock" constructed in 1960.

6. Corwith, including the X dock, is used exclusively for the handling of freight of Republic Carloading and Distributing Company, hereinafter called Republic, a Division of Yale Express System.

7. Republic is a freight forwarder within the meaning of Part IV of the Interstate Commerce Act, 49 U. S. C. §§ 1001 et seq. It consolidates small shipments of its customers into carload quantities and ships by carload over the facilities of Santa Fe and other common carriers. It is one of Santa Fe's best customers.

8. Santa Fe holds itself out through appropriate tariffs filed with the Interstate Commerce Commission to perform loading and unloading services at the request of carload shippers and at the separate rate for such services spelled out in the tariffs. At Santa Fe's Corwith Freight House No. 2, the actual work of consolidating, loading and unloading of freight is performed by Santa Fe employees and Republic is charged on a tariff basis for such handling. This arrangement with Santa Fe has been in existence since November 1956 when Republic consolidated its freight business with the Santa Fe. The choice whether to utilize carrier employees for such service is Republic's.

9. Several months prior to the inception of the instant suit, Republic requested that, because of expansion of its

business, an addition be constructed at Corwith in the form of an extension to the X dock. It further requested that Santa Fe lease to it the X dock and new addition and advised Santa Fe that upon execution of such lease, it would take over handling of its own loading and unloading work at the X dock and extension. Republic notified Santa Fe that if its proposal were not agreed to it would take its operations out of Corwith.

10. Republic has a collective agreement with the Chicago Truck Drivers, Chauffeurs, and Helpers Union, Independent, which gives members of that union exclusive right to perform Republic's loading and unloading in Chicago when such work is done by Republic employees.

11. After a period of negotiations, Santa Fe and Republic agreed upon the terms of the lease and Republic's taking over its own loading and unloading work at the X dock and proposed extension.

12. On March 12, 1964 Santa Fe notified the Clerks of that arrangement and at the request of the Clerks, representatives of Santa Fe met with representatives of the Clerks on April 7, 1964 to review the problems posed by the arrangement agreed upon by Santa Fe and Republic. They were unable to resolve their differences by agreement.

13. On April 13, 1964 Santa Fe posted notices at Corwith abolishing approximately 100 positions effective April 27, 1964 and advising the incumbents of those positions to exercise their seniority. The next day the effective date was changed to April 26. After the filing of the instant suit, the effective date was postponed to May 11, 1964.

14. Preceding the above events regarding the lease arrangement, and specifically on May 31, 1963 Clerks had served upon Santa Fe notices pursuant to Section 6 of the Railway Labor Act, 45 USC §156, to revise all existing agreements. The notices proposed, among other things, an immediate general wage increase, automatic future annual wage increases, cost-of-living adjustment, improved vacations, hospital and life insurance benefits and holiday pay. In addition, the notices requested a rule that:

> "Section 1. The number of employees in each of the occupational classifications as of May 31, 1963 covered

by the agreement between the carrier and the organization shall not be reduced for any reason excepting through normal attrition, and such reduction shall not exceed 2% per year.

* * * * *

Section 3. None of the work of the carrier now being performed, or susceptible of being performed, by employees coming within the scope of the agreement between the carrier and the organization, will be contracted out or otherwise transferred to other establishments or employers, and no existing arrangement under which such work is now being performed by other establishments or employers shall be continued, excepting upon agreement between the carrier and the duly authorized representative of the organization."

The notices also requested a rule providing for economic protection for employees adversely affected by such changes as transfers to other employers.

15. By letter dated June 17, 1963 Santa Fe served upon the Clerks a Section 6 notice containing carrier's counterproposals for changes in existing agreements. Santa Fe's proposed contract changes also related to wages, vacations, holidays, health and welfare and life insurance benefits, technological change and employee protection. In particular Santa Fe requested a rule that:

"1. All agreements, rules, regulations, interpretations or practices, however established, which interfere with or prohibit a carrier from exercising the following rights are hereby eliminated:

(a) The right to transfer work either permanently or temporarily from one facility, location, territory, department, seniority district or seniority roster to another.

(b) The right to abandon partially or entirely any operation or to consolidate any facility or service heretofore operated separately.

(c) The right to contract out work.

(d) The right to lease or purchase structures, facilities, equipment or component parts thereof, and to arrange for the installation, operation, maintenance or repair thereof by employees other than those of the carrier."

16. Immediately after the serving of the respective Section 6 notices, the parties agreed to bargain collectively on a national basis. After numerous bargaining meetings were held and no agreement being reached, the parties invoked the services of the National Mediation Board pursuant to the Railway Labor Act. The Board docketed the case as No. A-7128. The parties are now bargaining collectively regarding their notices under the auspices of the National Mediation Board.

17. Nothing in the current basic collective agreement dated November 3, 1963 between the Clerks and Santa Fe or any other agreement or practice restricts the right of Santa Fe to abolish the positions at Corwith as a result of Republic taking over its own loading and unloading operations at X dock and extension. Rule 16 and 17 thereof, which have in substance been a part of the agreement in effect between the parties for more than 20 years provide for not less than 5 days written notice to affected employees when regular forces are reduced or bulletined positions are abolished and for status and treatment of employees laid off on account of reduction in force. It has been the practice in the past for Santa Fe to adjust the size of forces according to the volume of work done.

18. Clerks concede that no claim is made in the instant proceeding that any express provision of the existing collective bargaining agreement between Clerks and Santa Fe precludes Santa Fe from consummating the lease and transfer of work.

Conclusions of Law

1. The court has jurisdiction of the parties and the subject matter.

2. Since it is conceded that nothing in the present agree-

ments in any way limits Santa Fe's right to enter into the lease demanded by Republic or to abolish the positions at Corwith's X dock and extension, no part of present controversy lies within the exclusive jurisdiction of the National Railroad Adjustment Board under Section 3 of the Railway Labor Act, 45 U. S. C. § 153.

3. The action of Santa Fe violates no law and no agreement with the Clerks and hence cannot be enjoined by the Court.

4. The fact that the Clerks have demanded from Santa Fe, in a notice duly served under Section 6 of the Railway Labor Act, a rule which would limit Santa Fe's right to abolish positions under any circumstances can have no effect on the rights of Santa Fe and the Clerks unless and until such rule actually becomes a part of the agreement between them. Unless and until such rule is agreed upon, the rights of the parties are as defined in existing rules and practices, including the basic collective agreement between the Clerks and Santa Fe dated November 3, 1963.

5. The relief herein sought by the Clerks must be denied and the complaint is dismissed.

[*Discussion*]

A hearing was had on the merits in the above cause in order to expedite determination on all facets of this suit without, however, effecting a waiver of defendant's motion to dismiss for failure to state a claim.

The court has concluded that the defendant's motion to dismiss should be sustained, and has this day signed and entered the above Findings of Fact and Conclusions of Law.

The court is persuaded by the rationale of the cases and authorities cited by defendant that institution of negotiations for collective bargaining pursuant to a Section 6 notice does not change the authority of a carrier to terminate employment of workers if such authority is not surrendered by the terms of an existing agreement or in violation of law; that the status quo referred to in § 6 is directed at preventing alteration of existing working conditions and not those proposed by a § 6 notice.

In this suit no issue is presented on the interpretation of the contract between the parties for it has been conceded by plaintiff that defendant's action constituted no violation of that contract. Thus, that action caused no change in existing conditions of employment covered by the agreement, and there exists no labor dispute, minor or major, between the litigants. Accordingly, there being no claim alleged upon which relief can be granted, the motion to dismiss is sustained and an order in accord therewith has this day been entered.

APPENDIX K

Flight Engineers International Association, WES Chapter, AFL-CIO, Plaintiff v. Western Air Lines, Inc., Defendant. *

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil No. 362-61-PH. April 28, 1961

[*Nature of Proceedings*]

HALL, D. J.: On April 11, 1961, the above case came on for hearing by order to show cause on plaintiff's motion for preliminary injunction, Charles K. Hackler, Esquire, and Ronald Scheinman, Esquire, appearing for plaintiff and Hugh W. Darling, Esquire, Donald K. Hall, Esquire, and D. P. Renda, Esquire, appearing for defendant. Having considered plaintiff's verified complaint, the affidavits and memoranda of the parties, the stipulations of counsel made in open court and the evidence taken, having taken judicial notice of the record in a prior action in this Court, entitled "*Western Air Lines, Inc., Plaintiff*, v. *Flight Engineers International Association, et al., Defendants*", Civil Action No. 178-61-HW, and having heard arguments of counsel, and being fully advised, the Court makes the following Fndings of Fact, Conclusions of Law and Order with respect to the order to show cause and plaintiff's motion for preliminary injunction.

Findings of Fact

1. Plaintiff Flight Engineers International Association, WES Chapter, AFL-CIO ("the Union"), is and at all times material to this case was an unincorporated association functioning as a labor organization.

2. Defendant Western Air Lines, Inc. ("Western") is

* 43 CCH Lab. Cas. ¶ 17,064.

and at all times material to this case was a common carrier by air engaged in interstate and foreign commerce and the transportation of mail for the United States Government, pursuant to certificates of public convenience and necessity issued to it by the Civil Aeronautics Board, an instrumentality of the United States Government, and as such is a carrier by air within the provisions of Sections 201, *et seq.*, of the Railway Labor Act (45 U. S. C. A. §§ 181 *et seq.*).

[*Applicable Collective Bargaining Agreement*]

3. As of April 11, 1958, Western entered into a collective bargaining agreement (the "collective bargaining agreement") with its flight engineers, as represented by the Union. By its terms the collective bargaining agreement superseded a prior agreement between Western and its flight engineers, as last amended July 29, 1957, and was to continue in full force and effect until January 1, 1961, thereafter to be subject to change as provided for in Section 6 of the Railway Labor Act (45 U. S. C. A. § 156).

[*Establishment of "System Board"*]

4. As of April 11, 1958, Western also entered into an agreement with its flight engineers, as represented by the Union, for the establishment, pursuant to Section 204 of the Railway Labor Act (45 U. S. C. A. § 184), of a Western Air Lines Flight Engineers' System Board of Adjustment (the "System Board"). By its terms this agreement also was to continue in full force and effect until January 1, 1961, thereafter to be subject to change as provided for in Section 6 of the Railway Labor Act (45 U. S. C. A. § 156).

5. It was stipulated that the collective bargaining agreement and the agreement establishing the System Board are now and at all times since January 1, 1961, have been in full force and effect.

[*Injunction Sought by Union*]

6. By this action for injunction, the Union seeks an order enjoining Western from employing any flight engi-

neer who does not hold an A & E or A & P mechanic certificate at the time of employment and directing Western to discharge all flight engineers now in its employ who do not hold one or the other type of mechanic certificate.

[*Contention of Union*]

7. The Union's suit is predicated on the collective bargaining agreement and on Western's practice prior to February 17, 1961, of requiring that its flight engineers hold A & E or A & P mechanic certificates at the time of employment. The Union contends that Western's practice established a "rule" or "working condition" which under Section 6 of the Railway Labor Act (45 U. S. C. A. § 156) Western was required to maintain during the period of negotiations for a change in the collective bargaining agreement and that in any event the flight engineers employed by Western since February 17, 1961, do not have the qualifications prescribed in the collective bargaining agreement.

[*Employer's Contentions*]

8. Western conceded that its practice prior to February 17, 1961, was to require that applicants for positions as flight engineers hold A & E or A & P mechanic certificates at the time of employment, but it disputed that such practice established a "rule" or "working condition" which it was required to maintain during negotiations for a change in the collective bargaining agreement. Western further maintained that it is complying with the collective bargaining agreement, that all of the flight engineers hired by it since February 17, 1961, meet the qualifications prescribed in the collective bargaining agreement and that in any event this Court has no jurisdiction to construe or interpret the agreement in this regard, the System Board being vested by the Railway Labor Act with the sole and exclusive jurisdiction to interpret and apply the collective bargaining agreement.

9. Since February 17, 1961, Western has employed a substantial number of flight engineers who do not hold either an A & E or an A & P mechanic certificate, but all of such

individuals are certified flight engineers and, in addition, hold commercial pilot licenses with instrument ratings, at the least.

[*Applicable Civil Air Regulations*]

10. The applicable Civil Air Regulations of the Federal Aviation Agency (and the predecessor Civil Aeronautics Administration) provide that no individual shall serve as a flight engineer in air commerce on an aircraft of United States registry without a "flight engineer certificate" issued by the Administrator. It is not required or suggested that a flight engineer also hold a mechanic certificate of any type.

[*Terms of Collective Bargaining Agreement*]

11. Section 3 of the collective bargaining agreement reads:

"SECTION 3

"QUALIFICATIONS

"(A) Any employee who qualified and was designated as Flight Engineer prior to the effective date of this Agreement shall be deemed to have met all the requirements for the position of Flight Engineer in existence as of that date. In the event additional requirements initiated by the Company are imposed, Flight Engineers in the employ of the Company shall be granted a reasonable period in which to meet such additional requirements on Company time and at Company expense.

"(B) 1. Except as hereinafter provided in sub paragraph (2) of this paragraph (B) each Flight Engineer employed by the Company will be required to have a mechanic's certificate issued by the CAA with power-plant and air-frame ratings (A & E or A & P certificates) or hold a degree in engineering from an accredited college or university granting such degrees (only after the completion of a course normally requiring classroom attendance for a period of four (4)

years) together with practical experience in the construction, maintenance and repair of aircraft and/or engines.

"2. Any employee who does not hold an A & E or an A & P certificate or an engineering degree, as aforesaid, at the time of his employment, but who has the shop experience or other mechanical qualifications to be able to secure such certificate within twelve (12) months after being designated for active line flying duty as a Flight Engineer with the Company, may be employed as a Flight Engineer by the Company, and as a condition of his continued employment as a Flight Engineer, shall obtain such A & E or A & P certificate with said twelve (12) month period.

"3. The Company agrees that, anything to the contrary in this Agreement nothwithstanding [sic] it will dismiss as a Flight Engineer any employee covered by sub paragraph (2) of this paragraph who does not obtain an A & E or an A & P certificate within twelve (12) months of his being designated for active line flying duty as a Flight Engineer by the Company."

It is significant that the provisions contained in paragraph (B), subparagraphs 1, 2 and 3, of the foregoing Section 3 were added to the collective bargaining agreement in 1958 by negotiation.

[*Changes in Agreement Sought by Union*]

12. On November 28, 1960, the Union notified Western in writing that it desired to reopen the collective bargaining agreement. On December 28, 1960, and on January 4, 1961, the Union submitted detailed proposed changes in the agreement, none of which involved Section 3. No change in Section 3 has been proposed by the Union at any time.

[*Employee's Refusal to Work*]

13. Commencing on February 17, 1961, while conferences pursuant to Section 6 of the Railway Labor Act (45 U. S. C. A. § 156) were in progress on the Union's proposed

changes in the collective bargaining agreement, Western's flight engineers, as a group, refused to report for work and to take any of Western's flights. Concurrently, the flight engineers of American Airlines, Eastern Air Lines, National Air Lines, Trans World Airlines, Pan American Airlines and the Flying Tiger Line also went out on strike across the nation. It was alleged that these walkouts were part of a nationwide flight engineer demonstration against a ruling by the National Mediation Board in a representative dispute under Section 2 Ninth of the Railway Labor Act (45 U. S. C. A. § 152) involving United Air Lines.

14. The flight engineer walkout brought to a standstill all air transportation operations of the affected air carriers, including Western.

[*Strike Temporarily Restrained*]

15. On February 18, 1961, Western filed an action in this Court entitled "*Western Air Lines, Inc., Plaintiff*, v. *Flight Engineers International Association, et al., Defendants*", Civil Action No. 178-61-HW, to enjoin the strike by its flight engineers. The Union and its officers and the Flight Engineers International union and its president were named as defendants as representatives of the striking flight engineers. On the same date a temporary restraining order was issued in such action by the Honorable Ernest A. Tolin, United States District Judge, enjoining the defendants therein from engaging in and continuing the strike against Western. The restraining order was served on the president and vice president of the Union on February 18, 1961, and on February 19, 1961, each member of the Union was advised of the restraining order by telegram sent by the Union. Notwithstanding the restraining order, the strike continued. On February 20, 1961, Western filed a dismissal of Civil Action No. 178-61-HW.

[*Employees Discharged*]

16. After commencement of the strike, each of Western's flight engineers was personally contacted at the time scheduled or assigned for flights and instructed to report for

work. Flight engineers who refused to report for work were discharged. The number of flight engineers who refused to report for duty and were discharged by Western was 123. Seven flight engineers did not refuse to report for duty and are now flying for Western. Western has hired flight engineers to replace those discharged and with the replacements has resumed a substantial portion of its air transportation operations.

17. On February 21, 1961, the Secretary of Labor of the United States, having taken notice of the nationwide tie-up in air transportation, issued a statement urging the flight engineers to return to work and on the same date the President of the United States appointed a fact finding board to inquire into the issues giving rise to the tie-up. All the affected air carriers, except Western, were named in the Executive Order. On February 23, 1961, the Executive Order was amended to add Western as a subject of inquiry. Neither the Secretary of Labor's statement nor the President's Executive Order had the force and effect of law. The Executive Order simply created a fact finding board to report to the President and the Secretary of Labor's statement simply requested voluntary action on the part of all concerned, employers and employees, which either were at liberty to disregard.

[*Contract Changes Sought by Employer*]

18. This action was filed on March 28, 1961. At a further bargaining conference held on March 29, 1961, Western submitted its proposed changes in the collective bargaining agreement, which proposed changes included the elimination of Section 3.

19. On April 7, 1961, Western submitted to the System Board the question of whether or not it was in compliance with Section 3 of the collective bargaining agreement, with respect to the qualifications of the flight engineers employed by it since February 17, 1961.

[*Equitable Defenses Raised by Employer*]

20. In addition to the contentions set forth in finding 8, Western interposed certain equitable defenses to the grant-

ing of a preliminary injunction in this action, including the defense that the Union was not before the Court with clean hands by reason of illegal strike action against Western, wilful disobedience of the temporary restraining order issued by this Court in Civil Action No. 178-61-HW enjoining the strike and the placing of flight engineer pickets at Western's places of business commencing on April 7, 1961. Western contended that the Union, jointly with the Flight Engineers International union, had ordered and directed the walkout of Western's flight engineers and the disregard of the order enjoining the strike and had ordered and is directing the picketing which is now going on against Western. The Union disputed this, but conceded that if the strike was Union-sponsored the Union violated the Railway Labor Act. In view of the conclusions hereinafter reached, it is unnecessary to rule on any of Western's equitable defenses, and the Court expressly makes no finding on whether or not the flight engineers strike or the failure to comply with the restraining order in Civil Action No. 178-61-HW or the picketing was or is sponsored by the Union, directly or indirectly, in concert with the Flight Engineers International union or otherwise.

Conclusions of Law

[*Certificate Requirement Not a "Rule"*]

1. Western's practice prior to February 17, 1961, of requiring that flight engineers hold an A & E or an A & P mechanic certificate at the time of employment did not establish a "rule" or "working condition" which Western was required to maintain during negotiations for a change in the collective bargaining agreement. A reading of Section 6 of the Railway Labor Act (45 U. S. C. A. § 156) in connection with other applicable Sections of the Act, particularly subdivisions (5), Sixth and Seventh of Section 2 (45 U. S. C. A. §§ 151a and 152), compels the conclusion that only agreements reached after collective bargaining are covered by Section 6 and that the prohibitions of Section 6 against change in rules or working conditions pending bargaining, and those of Section 2, Seventh, apply only

to rules and working conditions previously fixed by collective bargaining agreements. *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386, 400, 402, 403 [5 LC ¶ 51,130] (1942).

[*No Jurisdiction over Minor Dispute*]

2. The question of whether or not the flight engineers hired by Western since February 17, 1961, have the qualifications prescribed in the collective bargaining agreement involves the meaning and application of subparagraphs 1, 2 and 3 of Section 3 (B) of the agreement. Under the Railway Labor Act, and particularly subdivisions (5) and Sixth of Section 2 (45 U. S. C. A. §§ 151a and 152), Section 3 (45 U. S. C. A. § 153) and Section 204 (45 U. S. C. A. § 184), such issue is a "minor dispute" over which the System Board has sole and exclusive jurisdiction. This Court has no jurisdiction to go into or resolve the merits of the dispute or to construe or interpret the provisions of the collective bargaining agreement. *Elgin, Joliet & Eastern R. Co.* v. *Burley*, 325 U. S. 711, 725 [9 LC ¶ 51,212] (1945); *Railroad Trainmen* v. *Chicago River & I. R. R. Co.*, 353 U. S. 30, 33, 39 [32 LC ¶ 70,566] (1957); *Locomotive Engineers* v. *M-K-T R. Co.*, 363 U. S. 528, 531 [40 LC ¶ 66,631] (1960).

3. Plaintiff is not entitled to a preliminary injunction.

Order

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered, adjudged and decreed:

1. That the order to show cause issued herein on March 28, 1961, be and it is vacated.

2. That plantiff's motion for preliminary injunction be and it is denied.

APPENDIX L

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated labor organization, *Plaintiff*,

vs.

ILLINOIS TERMINAL RAILROAD COMPANY, a corporation, *Defendant.*

No. 66 C 96 (3)

MEMORANDUM & ORDER *

This action brought by the Brotherhood of Railroad Trainmen against the Illinois Terminal Railroad Company seeks an injunction restraining defendant from putting into effect certain work assignments as posted in its bulletins T-54 and T-55. A hearing was held on an order to show cause why the injunction prayed for should not be issued, and by consent of the parties the status quo was to be maintained until the final determination of the cause by the Court. Defendant also filed a motion to dismiss which was taken as submitted along with the case.

Defendant operates a railroad in interstate commerce and maintains its principal office in St. Louis, Missouri. Plaintiff is an unincorporated labor organization which is certified as the bargaining agent for the employees of defendant engaged in railroad train and yard service. Both plaintiff and defendant are subject to and governed by the Railway Labor Act.

The parties entered into a collective bargaining agreement effective as of September 1, 1957 and a supplemental agreement dated as of November 26, 1964. On or about February 28, 1966, without prior notice to plaintiff, defendant posted upon its bulletin boards maintained at its

* Unreported.

McKinley Junction and Federal yards bulletin T-54, and on or about March 1, 1966, similarly posted bulletin T-55. Essentially, insofar as this case is concerned, these bulletins operated to change the "on and off" duty points of assignment 508 and assignment 513, from McKinley Junction to A. O. Smith, as well as the starting time of assignment 513. Prior thereto, the trainmen involved (six in all) had reported for duty at McKinley Junction.

For years, defendant had required the diesel crews involved in these two assignments to report for duty at McKinley Junction, Madison, Illinois. The only other previous on-and-off duty point of assignment had been Federal. Defendant presently maintains bulletin boards only at these two points. So, too, lighted parking lots, lockers, and toilet and shower facilities have been provided only at the McKinley Junction and Federal yards.

The evidence shows that there has been a constant increase in work in the A. O. Smith area (8 rail miles and 5 highway miles from McKinley Junction) so that presently the full time use of a switch engine is required. For a short period of time, the crews of the two job assignments here involved were taxied at defendant's expense to and from McKinley Junction and the A. O. Smith location after reporting for duty, with the resultant loss to defendant of some 90 minutes of productive time. As for the change in starting time, the evidence shows that for years similar changes had been made unilaterally by defendant to meet its requirements, without consultation with plaintiff.

Plaintiff contends that the issuance of bulletins T-54 and T-55 constitute an attempt by defendant to change the working conditions as prescribed by the existing collective bargaining agreement, while defendant urges the contrary.

The parties are not in agreement as to whether the dispute between them is a "major" or "minor" one. It is the position of the defendant that the action it is taking is not specifically prohibited by the existing collective bargaining agreement, and it argues for a construction of the various provisions thereof authorizing it, as a prerogative of management, to create an additional on and off duty

location at the A. O. Smith plant for job assignments 508 and 513. Plaintiff argues that the proper interpretation of the agreement precludes the action which defendant is proposing, and that for such reason defendant's contemplated action will constitute a violation of the agreement.

We have carefully read the collective bargaining agreement and the amendment thereof, and have concluded that the proper resolution of the respective contentions of the parties depends upon the interpretation and application of the terms and provisions of the agreement in the light of all of the facts and circumstances. The difference between major and minor disputes is that the latter pertain to the interpretation and determination of existing agreements, whereas the former involve new agreements and changes in existing contracts. *Elgin, Joliet & Eastern Ry. Co.* v. *Burley,* 325 U.S. 711. In our view, the dispute between the parties in this case is a "minor" dispute within the meaning of the Railway Labor Act.

The fact that plaintiff has also served a Section 6 notice on defendant with respect to the matters here involved (without waiving its contention that the matters are governed by the existing agreement) does not operate to change this minor dispute into a major dispute. Having determined that the dispute is a minor one, it follows that the resolution thereof is within the exclusive jurisdiction of the National Railroad Adjustment Board, and that this Court has no jurisdiction to adjudicate the merits of the controversy.

Plaintiff argues that irrespective of whether the dispute be held to be major or minor, this Court should require defendant to maintain the status quo pending the exhaustion of the procedures of the Railway Labor Act. So far as we are advised, neither party has yet invoked the jurisdiction of the National Railroad Adjustment Board. Whether or not in this factual situation this Court has jurisdiction to order the maintenance of the status quo, as plaintiff argues, we find no basis in the facts for the exercise of such jurisdiction.

Plaintiff has not demonstrated it will suffer irreparable

injury, which is normally required as a basis for granting this extraordinary relief here sought. Nor has plaintiff convincingly shown there are any considerations of public policy in the immediate factual situation which would warrant the grant of a status quo injunction in the absence of a showing of irreparable injury.

In view of the foregoing, defendant's motion to dismiss should be and is hereby sustained, the order to show cause is discharged, and IT IS HEREBY ORDERED that plaintiff's complaint be and it is hereby dismissed.

Dated this 24th day of May, 1966.

/s/ JOHN K. REGAN,
United States District Judge.

APPENDIX M

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 4192

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION, ET AL, *Plaintiffs,*

v.

ILLINOIS CENTRAL RAILROAD COMPANY, *Defendant*

OPINION *

The plaintiffs seek a temporary injunction against the defendant to enjoin it from putting into operation a computer complex on its system which is designated as "M-A-I-N." The suit seeks to maintain the status quo with respect to jobs which may be altered by the installation of this expensive, but very helpful and modern communication. Realistically, the installation of this equipment along this entire railroad system may result in some job changes which the members of the plaintiffs' union will probably contend belong to them, while the members of another union known as Brotherhood of Airline and Railway Steamship Clerks claim such jobs as belonging to them; and the defendant presumably shares the view of the latter group. The Clerks' union is not a party to this suit. The plaintiffs have invoked the aid and assistance of the National Mediation Board under what is called a §6 notice.[1]

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* Unreported.

[1] The services of the National Mediation Board has been enlisted by plaintiffs in this case. 45 U.S.C., 1946 ed., § 156 (Section 6 of the Railway Labor Act), among other things, provides: "Rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of services of the Mediation Board." The board has not organized or entered upon any hearing of this matter at this time.

The validity and tenability of such notice and the proceeding thereunder is assailed. Defendant contemplates putting this system into operation early in October 1967 unless enjoined. The plaintiffs contend that the status quo requirement of 45 U.S.C. §156 (Section 6 of the Act) makes it mandatory that the railroad desist from such action in complying with such requirement of the act. The defendant, on the other hand, says that the status quo requirement of the act relates to any change in the express provisions of the contract itself, and not in mere technological, operational and organizational changes which it has the contract right to make under its mediation agreement with plaintiffs. Thus, it is sought to have the Court now enjoin the railroad from putting into effect this new system of communication designed to effect large economies and expedite and facilitate better service to the public, until the board has decided to whom such new jobs created thereby will belong. There is nothing in the act which provides that the board can protect the subject of such a dispute pending its determination thereof.

Counsel on both sides have stipulated as to the undisputed facts in this case for the purpose of this hearing on this application for a temporary injunction and have not augmented or supplemented such stipulation by any other or further evidence or testimony. A delay in the operation of the "M-A-I-N" computer system would result in very large financial losses to the railroad as stated in paragraph 22 of the stipulation. The losses which plaintiffs contend they will suffer in the absence of an injunction appear as argumentative conclusions not supported by any fact. On the other hand, the railroad by its stipulation and in oral argument before the Court assures the Court in §21 of the stipulation that plaintiffs and its members will be protected and lose nothing on any job position this year, or even longer, if necessary. No emergency necessitating injunctive relief is thus shown to exist. The relative rights and positions of the parties must be considered and the equipoise of probabilities weighed and considered for a proper determination as to the duty of the Court, or not, to issue such extraordinary processes now. The Court will make no decision further than is absolutely necessary to

a solution of the problem before the Court without impairing the questions to be considered and decided on final hearing.

It is the view of this Court under the circumstances that nothing contemplated to be done by the defendant in the installation of such "M-A-I-N" computer system while this controversy remains before the National Mediation Board can, or will affect, or impair any vested right of the plaintiff union, or its members as prescribed by §156, supra. There would appear no sound reason for deferring the operation of this valuable equipment until this collateral question is decided. But a discharge of an employee whose job was obviated and made useless or unnecessary by installation of the equipment is not contemplated by the Court in this decision.

The installation by the carrier of this modern "M-A-I-N" computer system on its lines does not come as any change in any existing contract between the parties. Actually, it is in furtherance of an express provision in the mediation contract between these parties.[2] It may well be doubted on reliable precedent that the Section 6 notice in suit is a notice within the purview of 45 U.S.C. §156, supra. The Clerks are not parties to this suit, but the plaintiffs seek by this notice to ingraft upon the contract a clause which would confer jobs created by the use of this new equipment upon the plaintiffs rather than the Clerks.[3]

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[2] The mediation agreement of February 7, 1965 between the parties in Article 3, Section 1 provides: "The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines."

[3] A jurisdictional dispute between unions over a job is not to be resolved by the Courts under that act. *Southern Pacific Co., et al* v. *Switchmen Union of North America,* (9CA) 356 F.2d 332 so holds. Significantly, appellees' complaint there to enjoin such work was dismissed by the trial court and no appeal was taken. The appeal involved the carrier's counter action and that of the affected union for a counter claim and summary judgment which was denied by the trial court and granted by the Court of Appeals. The Court said that Section 6 of the act was not designed or intended for the purpose sought.

The view expressed in *Southern Pacific* by the Ninth Circuit is shared by the National Mediation Board as well as by the Courts.[4] There would appear to be no basis or justification for the granting of a temporary injunction in this case and such request is denied. This memoranda and the stipulation of the parties suffice to conform with the requirements of Civil Rule 52 in this case.

A judgment accordingly may be presented.

s/ HAROLD COX
United States District Judge.

October 4, 1967

[4] *Williams, et al* v. *Jacksonville Terminal Co.*, 315 US 386, 62 S. Ct. 659; *Norfolk & Portsmouth Belt Line Railroad Co.* v. *Brotherhood of Railroad Trainmen, Lodge No. 514, et al*, (4CA) 243 F.2d 34.

APPENDIX N

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2528-66

SPOKANE, PORTLAND & SEATTLE RAILWAY CO.,

v.

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

Transcript of Proceedings, April 25, 1967

* * * * *

[2] Mr. HILL (Counsel for the ORC&B): . . . I have handed up to the Court and have given to Mr. Shea a draft of preliminary injunction. It is the typewritten draft before Your Honor. I have given a copy to Mr. Shea. It incorporates all the changes we have been able to agree on, but there are still some areas of dispute which Mr. Shea wishes to present to the Court. I think at this time I should let him present his objections to this draft, sir.

The COURT: Before counsel proceed, perhaps it may simplify and expedite matters if I very briefly and simply state what I had in mind.

I had in mind that there was an agreement between the parties, that March 25th agreement. There is a dispute as to what it meant. That dispute was submitted, and properly submitted under the law, to the National Railway Adjustment [3] Board.

Incidentally, the submission was made by the carriers, although it makes no difference which party submitted it.

When the Board shall have spoken, its interpretation will constitute the agreement between the parties. Either side can institute proceedings by Section 6 notice to change it; but until that is accomplished the agreement will remain.

Now my purpose or the thought I had in mind, my in-

tention was to issue an injunction to maintain the status quo until the Board makes its decision, a partial status quo, to provide that no crew shall be reduced below one conductor and two brakemen. I had no intention of going beyond that.

Now I have not seen the two drafts, but I thought I would indicate to you gentlemen what I had in mind in rendering my decision. I thought I made it clear, perhaps I didn't, but this may simplify this.

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[5] The COURT: Here we have an agreement. The question is what the agreement means.

Mr. SHEA (Counsel for the railroad): Right.

The COURT: The Adjustment Board has before it the proceeding to determine the meaning. Now I dissociate that entirely from the proceedings under a Section 6 notice.

It is a fact that in my opinion I went a little further in order to summarize the entire situation.

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[11] Mr. HILL: Your Honor, to address myself to these points in order, first may I address myself to paragraph 2 of the draft which I submitted, which would also require the status quo to be continued until the present Section 6 major dispute controversy between the parties has proceeded through the National Mediation Board. Now the reason I added that was for this reason: it depends on what the Adjustment Board does with the minor dispute. If the Adjustment Board should uphold the contention of the union that the March 1965 agreement establishes a minimum crew consist of one and two, that of course is the end of the matter. There would be no need then for the labor organization to continue to pursue its Section 6 notice asking for such an agreement if the Adjustment Board held that there already was one.

But now let us assume that the Adjustment Board holds to the contrary. Before the Adjustment Board the railroad has claimed that there never was a crew consist rule on this

railroad and that the agreement of March 1965 was not intended to establish one, that it was an attrition agreement, that it had nothing to do with crew consist. If that is true, then we still have an outstanding Section 6 notice to [12] establish an agreement pending before the Mediation Board on a railroad which claims there never was such a rule and which contention has been upheld by the Adjustment Board; but the railroad is still under this Court's decree in the Akron case, which requires it to maintain the status quo which existed during the two-year period of the Award of Board 282 until it is changed by proceedings under Section 6, and it would still be under the mandatory requirement of Section 6 of the Railway Labor Act, which says that it must maintain the status quo while a major dispute is pending.

So it seemed to me that paragraph 2 was necessary. Otherwise, we would get into the situation where this railroad, following a victory before the Adjustment Board, could be free to change crew consist as it pleased, despite the decree of this Court in Akron and despite the status quo provision of Section 6 of the Railway Labor Act.

The COURT: Well, now, Section 6 of the Railway Labor Act merely provides that there shall be no changes in existing agreements; but if the Adjustment Board should hold that there was no agreement, then the requirements of Section 6 would not be binding, would they?

Mr. HILL: I think so, sir. I respectfully suggest that Section 6 requires the railroad to continue to observe [13] existing agreements, rates of pay and working conditions.

The COURT: But if the Board says there was no agreement——

Mr. HILL: Then at least there was a working condition. It seems to me that was the effect of the decision of this Court in——

The COURT: Of course, I don't see how that situation can arise. There is an agreement of March 25th, 1965. Let's assume that there was no prior agreement. There is an agreement of March 25th, 1965. Everybody must concede that that is an agreement. The only question is as to what does it mean.

Now, therefore, all that the Board is going to do, I assume, or I venture to say with due respect to the Board this is all it should do, is to construe the March 25th, 1965 agreement.

Now if it agrees with the contention of the union, the Court, of course, by injunction, can force the carriers to abide by the construction the Board puts upon the agreement. But what authority would the Court have to do anything else?

Mr. HILL: If the Adjustment Board should uphold the contention of the carriers that the March 1965 agreement [14] was not a crew consist agreement and does not of itself create a minimum crew consist, we then have a railroad on which there was never any crew consist agreement whatever, but it did operate for 50 years under the state full crew laws and it did so during all of the period of the Award of Arbitration Board No. 282, and before that period was up the union served a Section 6 notice to continue an agreement or to create an agreement which would continue a minimum crew consist.

It seems to me, Your Honor, that that crew consist which existed for 50 years and during the two-year period of the Award is a working condition which must be maintained——

The COURT: In other words, is it your point that the full crew laws in themselves are equivalent to an agreement?

Mr. HILL: Exactly, sir.

The COURT: Well, I think there is some merit in that contention.

Well, I have this in mind: I don't like to issue injunctions to take care of possible contingencies in the future that may not arise. I would rather just maintain the status quo until the decision of the Adjusment Board, because if it decides in your favor, why, you will be perfectly content. It may be that then the carriers will serve a [15] Section 6 notice. But if they decide against you and you feel that you are entitled to some other relief, you can come to this Court and I will act very promptly.